The unrepealed General Act of the Governor General in Council, with Chronological Table

Vol. III (From Jan 1872 To June 1876, Inclusive)

Sub: L & L; India Acts / Unrepealed general Acts / 1876

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GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

THE

UNREPEALED GENERAL ACT

OF

THE GOVERNOR GENERAL IN COUNCIL,

WITH CHRONOLOGICAL TABLE.

IN THREE VOLUMES.

VOL. III,

FROM JANUARY 1872 TO JUNE 1876, INCLUSIVE.

CALCUTTA:
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT P
1876.

CALCUTTA:

PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING,
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PREFACE.

THIS, the third volume of the revised edition of the Acts of the Governor General in Council, is published under the authority of the Government of India, and contains, with two exceptions, the unrepealed Acts passed between January 1872 and June 1876 (both inclusive), which extend, or are extendible, to the whole of British India or to the Presidency Towns. The exceptions above referred to are Act XII of 1872 (*to amend the Native Passenger Ships Act*), which will be repealed as soon as Act VIII of 1876 is brought into force, and Act XII of 1876 (*for the repeal of certain obsolete enactments*), which is spent.

It is founded on the official copies of the Acts preserved in the Legislative Department.

The only changes made in reprinting are the following :—

(*a.*) Repealed portions of Acts have been omitted.

(*b.*) Where an Act directs that a section, a clause or wor be inserted in a former Act, in reprinting the former Act t insertion has been made.

(*c.*) Where one Act refers to another and such reference directed by a subsequent Act to be read as if made to the lat Act, the number, year and title of the latter Act have, as a r been substituted in the text.

(*d.*) In some instances marginal notes have been added others, they have been shortened or corrected.

The Officiating Registrar, Legislative Department, is res ble for correct printing of unaltered matter.

Some foot-notes have been added. They are chiefly (*a*) cross-references to Indian Acts; (*b*) references to English Statutes from which Indian Acts have been copied; (*c*) references to notifications in Indian Gazettes; and (*d*) references to the more important decisions of the High Courts as to the interpretation of the Acts hereinafter printed. It is hardly necessary to say that these notes are not authoritative.

The Chronological Table prefixed enumerates all Acts of the Governor General in Council passed during the period comprised in this volume, and shows at what pages those now printed will be found. It also shows whether a given Act has been repealed wholly, in part, or locally, and, in the case of unrepealed local Acts, where it is proposed to print them.

WHITLEY STOKES,
Secy. to the Govt. of India,
Legislative Department.

SIMLA;
4th July 1876.

The following omissions, &c., in the first two volumes of the Revised Edition of the Acts are necessitated by recent legislation.

VOLUME I.

P. 17, line 6. *Omit* "after the passing of this Act."

P. 54. In sec. 9, *omit* from "So much" down to "repealed and;" also *omit* "such."

Pp. 57, 58, sec. 7. *Omit* "after the passing of this Act," and "in such part of the said territories," and from "if he shall have so offended" down to "charter," and from "to a special" down to "no zila Court."

P. 63, sec. 4, line 6. *Omit* "or the East India Company."

P. 64. In sec. 1, *omit* the last thirty-seven words, and *omit* sec. 3.

P. 65, sec. 8. *Omit* "not exceeding three."

P. 73. *Omit* sec. 47.

P. 81. *Omit* sec. 90.

P. 84, sec. 101, line 1. *Omit* "after the passing of this Act."

P. 100. *Omit* sec. 17 and note.

P. 103, sec. 6. *Omit* "of the zila."

P. 112, sec. 26. *Omit* from "which" to "but."

P. 114. *Omit* secs. 30 and 33. In sec. 32, *omit* "and also the Court of Judicature of Prince of Wales' Island, Singapore and Malacca."

P. 117. *Omit* the last sixteen words of the Schedule.

P. 133, sec. 34. *Omit* "or by any Assistant to a Magistrate or Deputy Magistrate." In sec 35, *omit* "and district or joint police officers in the Presidency of Bombay."

P. 134, sec. 40. *Omit* "within the said territories."

P. 138, sec. 13. *Omit* "in the possession and."

P. 144, sec. 14. *Omit* from "and the term" to the end.

P. 148, sec. 1. *Omit* "in the possession and."

P. 158. In the preamble, *omit* the last four words.

P. 161, sec. 4. *Omit* from "and the first" to the end. In sec. 5, *omit* the first sentence and the words and figures "and the Vice-Chancellor hereinbefore nominated shall go out of office on the first day of January 1859," and the words "the Vice-Chancellor hereinbefore nominated, or."

P. 164, sec. 3. *Omit* "within the said territories," and "of the crimes mentioned in the preceding section or any other."

P. 165, sec. 4. *Omit* "the attendance or fatwá of a law-officer, or." *Omit* secs. 7, 8, 9.

P. 166. *Omit* sec. 10. In sec. 11, *omit* "lawfully exercising the powers of a Magistrate, and any Assistant to a Magistrate, or Deputy Magistrate."

P. 167. In the preamble, *omit* the last four words.

P. 169. In sec. 4, *omit* the last twelve words.

P. 170. In sec. 5, *omit* the first sentence, and the words and figures "and the Vice-Chancellor hereinbefore nominated shall go out of office on the first day of January 1859," and the words "the Vice-Chancellor hereinbefore nominated, or."

P. 175. In the preamble, *omit* the last four words.

P. 179. In sec. 4, *omit* the last fourteen words. In sec. 5, *omit* the first sentence, and the words and figures "and the Vice-Chancellor hereinbefore nominated

shall go out of office on the first day of January 1859," and "the Vice-Chancellor hereinbefore nominated, or."

P. 216. *For* sec. 54, *substitute* the following:

"54. When any monies are payable in India to any seaman or apprentice for wages or otherwise under any agreement wherein such monies are expressed to be payable in British currency, the seaman or apprentice shall be entitled to demand and recover in the current coin of India the amount due to him estimated according to the rate of exchange for the time being fixed by the Secretary of State for India in Council, with the concurrence of the Lords Commissioners of Her Majesty's Treasury, for the adjustment of financial transactions between the Imperial and the Indian Governments." *Add a note* 'Act XIII of 1876, sec. 10.'

P. 218, sec. 63. *Omit* "or in any station of the Settlement of Prince of Wales' Island, Singapore and Malacca, to the Court of Judicature there."

P. 220, sec. 67. *Omit* "and in the Straits Settlement in such manner as the Governor shall notify."

P. 237. In the title, *omit* "and for constituting those Officers Registers of Deeds." In the preamble, *omit* "and that they should also be appointed registers of deeds within the same limits." *To sec.* 3 *add a note:* "Repealed, so far as it relates to the Presidency of Madras, by Act No. XII of 1876."

P. 238. *Omit* sec. 5.

P. 329. *Omit* sec. 13.

Pp. 336 and 337. *Omit* sec. 36.

Pp. 342—346. *Omit* Act No. VIII of 1860.

P. 533, sec. 21. *For* para. 3, *substitute* "All expressions and provisions which in this Act are applied to horses, shall also apply to all other animals employed in drawing any carriage ordinarily used for the purpose of conveying passengers for hire to or from any place in British India." *Add a note* "Act XVI of 1876."

Pp. 543—546. *Omit* Act No. V of 1862.

Pp. 646—648. *Omit* Act No. XXIX of 1863.

VOLUME II.

P. 655, sec. 24. *Omit* the words "*and the several Stations of the Settlement of Prince of Wales' Island, Singapore and Malacca.*"

P. 661, sec. 3. *Omit* "the said."

Pp. 673 and 674, sec. 8. *Omit* "*and for constituting those Officers Registrars of Deeds.*"

P. 803, sec. 12. *Omit* "or District," and "*and for constituting those Officers Registers of Deeds.*" *Omit* the last twenty-one words, and *add a note:* "Repealed, as to the trial of small suits in military bázárs, cantonments and stations in the Presidency of Madras, by Act No. XII of 1876."

P. 822. *Omit* sec. 53.

P. 838. *Omit* secs. 1, 2 and 3.

P. 962. *Omit* sec. 55, and in sec. 56, *omit* "or by any Assistant to a Magistrate or Deputy Magistrate."

P. 1012, sec. 1. *Omit* the first eight words.

P. 1235, sec. 39. *Omit* the words "by the Code of Civil Procedure."

Pp. 1241 and 1242. *Omit* sec. XXIX.

Pp. 1244 and 1245. *Omit* sec. 1.

P. 1250, sec. 18. *Omit* para. 1.

P. 1423. *Omit* sec. 23.

REVISED ACTS.

Alterations of the fourth columns of the Chronological Tables prefixed to the First and Second Volumes.

Substitute 'Rep., XII of 1876' *opposite the following Acts :—*

IX of 1835.
XXIX of 1838.
XVI of 1844.
VIII of 1846.
XL of 1850.
XXXI of 1861.
XIII of 1863.
XIV of 1863.
XII of 1866.

Insert 'Rep. in part, XII of 1876' *opposite the following Acts :—*

XIX of 1838.
VI of 1840.
XVIII of 1841.
XIX of 1841.
I of 1846.
XI of 1846.
XX of 1847.
XV of 1848.
IX of 1850.
XXXVII of 1850.
VIII of 1851.
XVII of 1852.
XXI of 1852.
XXX of 1852.
XVIII of 1854.
XXXI of 1854.
VI of 1855.
XXIV of 1855.
VIII of 1856.
II of 1857.
IV of 1857.
XI of 1857.
XXII of 1857.
XXVII of 1857.
XXIX of 1857.
I of 1859.
III of 1859.
XV of 1859.
III of 1864.
XVII of 1864.
XXII of 1864.
XI of 1865.
XV of 1865.
XXIX of 1865.
XIV of 1866.
XXV of 1866.
VII of 1867.
XIII of 1867.
XIV of 1869.
X of 1870.
XXII of 1870.
XXIII of 1870.
XXVII of 1871.

Insert 'Rep. in part, 'XIII of 1876' *opposite* Act I of 1859.

Insert 'Rep., XI of 1876' *opposite the following Acts :—*

IV of 1862.
V of 1862.
VI of 1862.
XXIX of 1863.
XIX of 1870.

Insert 'Rep. in part, X of 1876' *opposite the following Acts :—*

XVI of 1838.
X of 1848.
XI of 1852.
VIII of 1853.

Insert 'Rep., VIII of 1876' *opposite the following Acts :—*

XXV of 1859.
XII of 1870.

Insert 'Rep. in part locally, IV of 1876' *opposite* Act XX of 1865.

Insert 'Rep., II of 1876' *opposite* Act XXXV of 1852.

Insert 'Rep., I of 1876' *opposite the following Acts :—*

XXXIV of 1854.
VIII of 1860.

Opposite Act III of 1856, *substitute* 'Rep. locally, Ben. Act II of 1876.'

Opposite Act XXIII of 1860, *after* 'X of 1871,' *substitute* 'elsewhere, Bengal Act II of 1876.'

Opposite Act XXVI of 1850, *for* 'Bengal Act III of 1864, s. 5,' *substitute* 'Bengal Act V of 1876' *and cancel* 'Bengal Act VI of 1868, s. 3.'

Opposite Act XX of 1856, *for* ' Bengal Act VI of 1868, s. 3,' *read* ' Bengal Act V of 1876,' *and cancel* ' Bengal Act VI of 1867, s. 3, ' *and* ' locally, in part, Bengal Act III of 1864, s. 5.'

[N. B.—*Notwithstanding the total repeal which Bengal Act V of* 1876 *purports to effect, Act XX of* 1856 *must be deemed to be still in force in the Lower Provinces for the purposes of the Cantonment Act, XXII of* 1864, *s.* 14.]

Opposite Act XXI of 1857, *insert* ' Rep. in part, Bengal Act V of 1876. '

Opposite Act XII of 1858, *substitute* ' Rep., Bengal Act 5 of 1876.'

W. S.

6th October 1876.

CHRONOLOGICAL TABLE OF ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Year.	Number.	Subject-matter.	How disposed of.
1872 ...	I	Evidence	Rep. in part, XVIII of 1. Printed, General Acts, p. [illegible]
	II	Reviving Act XV of 1867 ...	Rep., IV of 1873.
	III	Marriage	Rep. in part, XVI of 1874; XII of 1876. Printed, General Acts, p. 149
	IV	Laws, Panjáb ...	Rep. in part, XV of 1875. Printed, Panjáb Code.
	V	Sindh	Printed, Bombay Code.
	VI	Oaths and Affirmations ...	Rep., X of 1873.
	VII	Courts, British Burma ...	Rep., XVII of 1875.
	VIII	Income-tax	Rep., XVI of 1874.
	IX	Contract Law	Printed, General Acts, p. 1506.
	X	Criminal Procedure ...	Rep. in part, XI of 1874; XVI of 1874; V of 1876; XII of 1876. Printed, General Acts, p. 1600.
	XI	Extradition	Rep. in part, XII of 1873; XVI of 1874. Printed, General Acts, p. 1818.
	XII	Native Passenger Ships ...	Rep., VIII of 1876.
	XIII	Patterns and Designs ...	Rep. in part, XVI of 1874. Printed, General Acts, p. 1824.
	XIV	Exempting Straits Settlements from Emigration Act ...	Printed, General Acts, p. 1825.
	XV	Marriage of Christians ...	Rep. in part, XVI of 1874. Printed, General Acts, p. 1830.
	XVI	Spirit-duty, Burma ...	Printed, Burma Code.
	XVII	Postponing Commencement of Code of Criminal Procedure	Rep., XII of 1873.

ear.	Number.	Subject-matter.	How disposed of.
2 ...	XVIII	Amending Evidence Act ...	Rep. in part, X of 1873; XVI of 1874; XII of 1876. Printed, General Acts, p. 1856.
	XIX	Definition of 'Coin,' Penal Code	Printed, General Acts, p. 1857.
	XX	Amending Act V of 1872 ...	Printed, Bombay Code.
	XXI	Lunatic Sepoys ...	Rep. in part, XVI of 1874; XII of 1876. Printed, General Acts, p. 1858.
	XXII	Amending Act X of 1859 ...	Rep., XVIII of 1873.
	XXIII	Re-importation of certain goods cleared at Rangoon ...	Printed, Burma Code.
	XXIV	Repealing Bombay Reg. XIII. 1827, s. 34, cl. 9 ...	Rep., XII of 1873.
	XXV	Salt, Panjáb	Rep., VIII of 1875.
	XXVI	Opium, Panjáb	Printed, Panjáb Code.
	XXVII	Criminal Procedure Code, Sindh	Rep., XVI of 1874.
3 ...	I	Burma Courts ..	Rep., XVII of 1875.
	II	Burma Ferries ...	Rep. in part, XVI of 1874. Printed, Burma Code.
	III	Civil Courts, Madras ...	Rep. in part, XII of 1873. Printed, Madras Code.
	IV	Municipalities, Panjáb ...	Rep. in part, XII of 1873; XVI of 1874. Printed, Panjáb Code.
	V	Savings Banks ...	Rep. in part, XII of 1873; XVI of 1874. Printed, General Acts, p. 1860.
	VI	Transhipment of Goods ...	Rep. in part, XVI of 1874. Printed, General Acts, p. 1863.
	VII	Port-dues, Burma ...	Rep., XII of 1875.
	VIII	Canals and Drainage, Northern India ...	Rep. in part, XII of 1873; XVI of 1874. Printed, N. W. Provinces Code.
	IX	Appeals, Panjáb ...	Rep. in part, XII of 1873; XVI of 1874. Printed, Panjáb Code.
	X	Judicial Oaths ...	Rep. in part, XII of 1873; XII of 1876. Printed, General Acts, p. 1865.
	XI	Municipalities, Central Provinces ...	Rep. in part, XVI of 1874. Printed, Central Provinces Code.
	XII	Obsolete Enactments Repeal...	Rep., XVI of 1874.
	XIII	Timber, British Burma ...	Rep. in part, XVI of 1874. Printed, Burma Code.

Year.	Number.	Subject-matter.	How disposed of.
1873 ...	XIV	Lunatic Soldiers' Property	Rep. in part, XVI of 1874. Printed, General Acts, p. 1868.
	XV	Municipalities, N. W. Provinces and Oudh ...	Rep. in part, XVI of 1874. Printed, N. W. Provinces Code; ,, Oudh Code.
	XVI	Village and Road Police, N. W. Provinces ...	Rep. in part, XVI of 1874; XII of 1876. Printed, N. W. Provinces Code.
	XVII	Nawáb Názim's Debts ...	Printed, Private & Personal Acts.
	XVIII	Rent, N. W. Provinces ...	Printed, N. W. Provinces Code.
	XIX	Land-Revenue, N. W. Provinces	Printed, N. W. Provinces Code.
	XX	Prince of Arcot ...	Printed, Private & Personal Act
1874 ...	I	Quieting titles, N. W. Provinces	Spent.
	II	Administrator General ...	Printed, General Acts, p. 1874.
	III	Married Women's Property	Rep. in part, XII of 1876. Printed, General Acts, p. 1895
	IV	Foreign Recruiting	Rep. in part, XII of 1876. Printed, General Acts, p. 189
	V	Appeals to Assistant Commissioner, Kulu ...	Rep. in part, XVI of 1874; XII of 1876. Printed, Panjáb Code.
	VI	Appeals to Judicial Committee	Rep. in part, XVI of 1874. Printed, General Acts, p. 19
	VII	Municipalities, British Burma	Printed, Burma Code.
	VIII	Exercise of Powers in Assam	Printed, Assam Code.
	IX	European Vagrancy ...	Printed, General Acts, p. 1
	X	Salt: Ganjám, Orissa ...	Rep. in part, VIII of 1875 Printed, Madras Code; ,, Lower Provin
	XI	Amending Code of Criminal Procedure	Printed, General Acts, p.
	XII	Exercise of powers in Sylhet	Printed, Assam Code.
7 8. 9.	XIII	European British Minors ...	Printed, Panjáb Code; ,, Oudh Code; ,, Central Provin ,, Burma Code; ,, Coorg Code; ,, Assam Code; ,, Ajmer & Mair
10.	XIV	Scheduled Districts ...	Printed, General Acts,
11. 12.	XV	Local Extent of certain Enactments	Rep. in part, VIII of XI of 1 XII of Printed, General Acts

Year.	Number.	Subject-matter.	How disposed of.
1874 ...	XVI	Obsolete Enactments Repeal	Rep., XII of 1876.
1875 ...	I	Distresses, Presidency Towns	Printed, General Acts, p. 1949.
	II	Law Reports	Rep., XVIII of 1875.
	III	Correcting Act XVI of 1874	Rep., XII of 1876.
	IV	Merchant Shipping ...	Rep. in part, XII of 1876. Printed, General Acts, p. 1958.
	V	Unattested Sepoys ...	Printed, General Acts, p. 1966.
	VI	Loan to Sir Jamsetjee Jeejeebhoy	Printed, Private & Personal Acts.
	VII	Fisheries, Burma ...	Rep. in part, XII of 1876. Printed, Burma Code.
	VIII	Inland Customs ...	Rep. in part, XII of 1876. Printed, General Acts, p. 1968.
	IX	Majority	Printed, General Acts, p. 1979.
	X	Criminal Procedure, High Courts	Rep. in part, XII of 1876. Printed, General Acts, p. 1986.
	XI	Salt, Madras	Printed, Madras Code.
	XII	Ports and Port-dues ...	Printed, General Acts, p. 2027.
	XIII	Probates and Letters of Administration	Printed, General Acts, p. 2058.
	XIV	Panjáb Judicial Administration	Printed, Panjáb Code.
	XV	Amending Panjáb Laws Act	Printed, Panjáb Code.
	XVI	Tariff	Rep. in part, XII of 1876. Printed, General Acts, p. 2060.
	XVII	Burma Courts	Printed, Burma Code.
	XVIII	Law Reports	Rep. in part, XII of 1876. Printed, General Acts, p. 2079.
	XIX	Panjáb Chief Court ...	Printed, Panjáb Code.
	XX	Central Provinces Laws ...	Printed, Central Provinces Cod
	XXI	Calcutta University, Honorary degrees	Printed, General Acts, p. 2080
	I	Telegraphs	Printed, General Acts, p. 2082
	II	Burma Land and Revenue ...	Printed, Burma Code.
	III	Burma Labour Law ...	Printed, General Acts, p. 2091
	IV	Bengal Revenue Agents ...	Printed, Lower Provinces Cod
	V	Reformatory Schools ...	Printed, General Acts, p. 211
	VI	Chutiá Nágpur Encumbered Estates	Printed, Lower Provinces Cod
	VII	Extending and amending Act XXVII of 1871 ...	Printed, General Acts, p. 2
	VIII	Native Passenger Ships ...	Printed, General Acts, p.
	IX	Native Coinage ...	Printed, General Acts, p.
	X	Bombay Revenue Jurisdiction	Printed, Bombay Code.
	XI	Presidency Banks ...	Printed, General Acts, p.
	XII	Obsolete Enactments ...	Spent.
	XIII	Merchant Seamen ...	Printed, General Acts, p.

THE

UNREPEALED GENERAL ACTS

OF

THE GOVERNOR GENERAL IN COUNCIL.

THE INDIAN EVIDENCE ACT, 1872.

CONTENTS.

Preamble.

PART I.—RELEVANCY OF FACTS

CHAPTER I.—PRELIMINARY.

SECTION.

1. Short title.
   Extent.
   Commencement of Act.
2. Repeal of enactments.
3. Interpretation-clause.
4. "May presume."
   "Shall presume."
   "Conclusive proof."

CHAPTER II.—OF THE RELEVANCY OF FACTS.

5. Evidence may be given of facts in issue and relevant facts.
6. Relevancy of facts forming part of same transaction.
7. Facts which are occasion, cause, or effect of facts in issue.
8. Motive, preparation and previous or subsequent conduct.
9. Facts necessary to explain or introduce relevant facts.
10. Things said or done by conspirator in reference to common design.
11. When facts not otherwise relevant become relevant.
12. In suits for damages, facts tending to enable Court to determine a are relevant.

SECTION.

13. Facts relevant when right or custom is in question.
14. Facts showing existence of state of mind, or of body or bodily feeling.
15. Facts bearing on question whether act was accidental or intentional.
16. Existence of course of business, when relevant.

Admissions.

17. Admission defined.
18. Admission—
by party to proceeding or his agent;
by suitor in representative character;
by party interested in subject-matter;
by person from whom interest derived.
19. Admissions by persons whose position must be proved as against party to suit.
20. Admissions by persons expressly referred to by party to suit.
21. Proof of admissions against persons making them, and by or on their behalf.
22. When oral admissions as to contents of documents are relevant.
23. Admissions in civil cases, when relevant.
24. Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.
25. Confession to Police officer not to be proved.
26. Confession by accused while in custody of Police not to be proved against him.
27. How much of information received from accused, may be proved.
28. Confession made after removal of impression caused by inducement, threat or promise, relevant.
29. Confession otherwise relevant not to become irrelevant because of promise of secrecy, &c.
30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.
Admissions not conclusive proof, but may estop.

Statements by Persons who cannot be called as Witnesses.

32. Cases in which statement of relevant fact by person who is dead, cannot be found, &c., is relevant.
When it relates to cause of death;
or is made in course of business;
or against interest of maker;
or gives opinion as to public right or custom, or matters of general interest;
or relates to existence of relationship;
or is made in will or deed relating to family affairs;
or in document relating to transaction mentioned in section 7 clause (*a*);
or is made by several persons, and expresses feelings relevant to matter in question.

SECTION.

33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

Statements made under special Circumstances.

34. Entries in books of account when relevant.
35. Relevancy of entry in public record, made in performance of duty.
36. Relevancy of statements in maps, charts and plans.
37. Relevancy of statement as to fact of public nature, contained in certain Acts or notifications.
38. Relevancy of statements as to any law contained in law-books.

How much of a Statement is to be proved.

39. What evidence to be given when statement forms part of a conversation, document, book, or series of letters or papers.

Judgments of Courts of Justice, when relevant.

40. Previous judgments relevant to bar a second suit or trial.
41. Relevancy of certain judgments in probate, &c., jurisdiction.
42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.
43. Judgments, &c., other than those mentioned in sections 40-42, when relevant.
44. Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

Opinions of third Persons, when relevant.

45. Opinions of experts.
46. Facts bearing upon opinions of experts.
47. Opinion as to handwriting, when relevant.
48. Opinion as to existence of right or custom, when relevant.
49. Opinions as to usages, tenets, &c., when relevant.
50. Opinion on relationship, when relevant.
51. Grounds of opinion when relevant.

Character when relevant.

52. In civil cases, character to prove conduct imputed, irrelevant.
53. In criminal cases, previous good character relevant.
54. In criminal proceedings previous conviction relevant, but not previous bad character, except in reply.
55. Character as affecting damages.

PART II.—ON PROOF.

CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.

56. Fact judicially noticeable need not be proved.
57. Facts of which Court must take judicial notice.
58. Facts admitted need not be proved.

Chapter IV.—Of Oral Evidence.

Section.
59. Proof of facts by oral evidence.
60. Oral evidence must be direct.

Chapter V.—Of Documentary Evidence.

61. Proof of contents of documents.
62. Primary evidence.
63. Secondary evidence.
64. Proof of documents by primary evidence.
65. Cases in which secondary evidence relating to documents may be given.
66. Rules as to notice to produce.
67. Proof of signature and handwriting of person alleged to have signed or written document produced.
68. Proof of execution of document required by law to be attested.
69. Proof where no attesting witness found.
70. Admission of execution by party to attested document.
71. Proof when attesting witness denies the execution.
72. Proof of document not required by law to be attested.
73. Comparison of signature, writing or seal with others admitted or proved.

Public Documents.

74. Public documents.
75. Private documents.
76. Certified copies of public documents.
77. Proof of documents by production of certified copies.
78. Proof of other official documents.

Presumptions as to Documents.

79. Presumption as to genuineness of certified copies.
80. Presumption as to documents produced as record of evidence.
81. Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.
82. Presumption as to document admissible in England without proof of seal or signature.
83. Presumption as to maps or plans made by authority of Government.
84. Presumption as to collections of laws and reports of decisions.
85. Presumption as to powers-of-attorney.
86. Presumption as to certified copies of foreign judicial records.
87. Presumption as to books, maps and charts.
88. Presumption as to telegraphic messages.
89. Presumption as to due execution, &c., of documents not produced.
90. Presumption as to documents thirty years old.

Chapter VI.—Of the Exclusion of Oral by Documentary Evidence.

91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.
92. Exclusion of evidence of oral agreement.

SECTION.

93. Exclusion of evidence to explain or amend ambiguous document.
94. Exclusion of evidence against application of document to existing facts.
95. Evidence as to document unmeaning in reference to existing facts.
96. Evidence as to application of language which can apply to one only of several persons.
97. Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.
98. Evidence as to meaning of illegible characters, &c.
99. Who may give evidence of agreement varying terms of document.
100. Saving of provisions of Indian Succession Act relating to wills.

PART III.—PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.—OF THE BURDEN OF PROOF.

101. Burden of proof.
102. On whom burden of proof lies.
103. Burden of proof as to particular fact.
104. Burden of proving fact to be proved to make evidence admissible.
105. Burden of proving that case of accused comes within exceptions.
106. Burden of proving fact especially within knowledge.
107. Burden of proving death of person known to have been alive within thirty years.
108. Burden of proving that person is alive who has not been heard of for seven years.
109. Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.
110. Burden of proof as to ownership.
111. Proof of good faith in transactions where one party is in relation of active confidence.
112. Birth during marriage, conclusive proof of legitimacy.
113. Proof of cession of territory.
114. Court may presume existence of certain facts.

CHAPTER VIII.—ESTOPPEL.

115. Estoppel.
116. Estoppel of tenant;
and of licensee of person in possession.
117. Estoppel of acceptor of bill of exchange, bailee or licensee.

CHAPTER IX.—OF WITNESSES.

118. Who may testify.
119. Dumb witnesses.
120. Parties to civil suit, and their wives or husbands.
Husband or wife of person under criminal trial.
121. Judges and Magistrates.
122. Communications during marriage.
123. Evidence as to affairs of State.

SECTION.

124. Official communications.
125. Information as to commission of offences.
126. Professional communications.
127. Section 126 to apply to interpreters, &c.
128. Privilege not waived by volunteering evidence.
129. Confidential communications with legal advisers.
130. Production of title-deeds of witness not a party.
131. Production of documents which another person, having possession, could refuse to produce.
132. Witness not excused from answering on ground that answer will criminate.
Proviso.
133. Accomplice.
134. Number of witnesses.

CHAPTER X.—OF THE EXAMINATION OF WITNESSES.

135. Order of production and examination of witnesses.
136. Judge to decide as to admissibility of evidence.
137. Examination-in-chief.
Cross-examination.
Re-examination.
138. Order of examinations. Direction of re-examination.
139. Cross-examination of person called to produce a document.
140. Witnesses to character.
141. Leading questions.
142. When they must not be asked.
143. When they may be asked.
144. Evidence as to matters in writing.
145. Cross-examination as to previous statements in writing.
146. Questions lawful in cross-examination.
147. When witness to be compelled to answer.
148. Court to decide when question shall be asked and when witness compelled to answer.
149. Question not to be asked without reasonable grounds.
150. Procedure of Court in case of question being asked without reasonable grounds.
151. Indecent and scandalous questions.
152. Questions intended to insult or annoy.
153. Exclusion of evidence to contradict answers to questions testing veracity.
154. Question by party to his own witness.
155. Impeaching credit of witness.
156. Questions tending to corroborate evidence of relevant fact, admissible.
157. Former statements of witness may be proved to corroborate later testimony as to same fact.
158. What matters may be proved in connection with proved statement relevant under section 32 or 33.
159. Refreshing memory.

SECTION.

When witness may use copy of document to refresh memory.
160. Testimony to facts stated in document mentioned in section 159.
161. Right of adverse party as to writing used to refresh memory.
162. Production of documents.
Translation of documents.
163. Giving, as evidence, of document called for and produced on notice.
164. Using, as evidence, of document production of which was refused on notice.
165. Judge's power to put questions or order production.
166. Power of jury or assessors to put questions.

CHAPTER XI.—OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

167. No new trial for improper admission or rejection of evidence.

SCHEDULE.—Enactments repealed.

ACT No. I OF 1872.

Received the Governor General's assent on the 15*th March* 1872.

The Indian Evidence Act, 1872.

WHEREAS it is expedient to consolidate, define and amend the Law of Evidence; It is hereby enacted as follows:— Preamble.

PART I.—RELEVANCY OF FACTS.

CHAPTER I.—PRELIMINARY.

1. This Act may be called "The Indian Evidence Act, 1872": Short title.

It extends to the whole of British India,[a] and applies to all judicial proceedings in or before any Court, including Courts Martial,[b] but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator; Extent.

and it shall come into force on the first day of September 1872. Commencement of Act.

2. On and from that day the following laws shall be repealed:— Repeal of enactments.

(1.) All rules of evidence not contained in any Statute, Act or Regulation in force in any part of British India:

(2.) All such rules, laws and regulations as have acquired the force of law under the twenty-fifth section of 'The Indian Councils' Act, 1861,' in so far as they relate to any matter herein provided for; and

(3.) The enactments mentioned in the schedule hereto, to the extent specified in the third column of the said schedule.

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[a] It has been applied to the Haidarábád Assigned Districts and the cantonment of Sikandarábád, Foreign Department, No. 80J, dated 2nd May 1872.

[b] This is repealed, as to European Courts Martial, by the Mutiny Act: "No court martial shall in respect of the conduct of its proceeding, or the reception or rejection of evidence, be subject to the provisions of the 'Indian Evidence Act, 1872' or any Act of any legislature, other than the Parliament of the United Kingdom."—38 Vic., c. 7, s. 101.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act or Regulation in force in any part of British India and not hereby expressly repealed.

Interpretation-clause.

3. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

"Court."

"Court" includes all Judges and Magistrates and all persons, except arbitrators, legally authorized to take evidence.

"Fact"

"Fact" means and includes—

(1) any thing, state of things, or relation of things, capable of being perceived by the senses;

(2) any mental condition of which any person is conscious.

Illustrations.

(*a.*) That there are certain objects arranged in a certain order in a certain place, is a fact.

(*b.*) That a man heard or saw something is a fact.

(*c.*) That a man said certain words is a fact.

(*d.*) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(*e.*) That a man has a certain reputation is a fact.

"Relevant."

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in issue."

The expression "Facts in issue" means and includes—

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue, is a fact in issue.

Illustrations.

A is accused of the murder of B.

At his trial the following facts may be in issue:—

That A caused B's death;

That A intended to cause B's death;

That A had received grave and sudden provocation from B;

That A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

"Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. "Document."

Illustrations.

A writing is a document:

Words printed, lithographed or photographed are documents:

A map or plan is a document:

An inscription on a metal plate or stone is a document:

A caricature is a document.

"Evidence" means and includes— "Evidence."

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;

such statements are called oral evidence:

(2) all documents produced for the inspection of the Court;

such documents are called documentary evidence.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. "Proved."

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. "Disproved."

A fact is said not to be proved when it is neither proved nor disproved. "Not proved."

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it: "May presume."

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved: "Shall presume."

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it. "Conclusive proof."

Chapter II.—Of the Relevancy of Facts.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others. Evidence may be given of facts in issue and relevant facts.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations.

(*a.*) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue—

A's beating B with the club ;

A's causing B's death by such beating ;

A's intention to cause B's death.

(*b.*) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

Relevancy of facts forming part of same transaction.

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations.

(*a.*) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(*b.*) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(*c.*) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(*d.*) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

Facts which are occasion, cause or effect of facts in issue.

7. Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations.

(*a.*) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

(*b.*) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(*c*) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation and previous or subsequent conduct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(*a.*) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(*b.*) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(*c*) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(*d.*) The question is, whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate; that he consulted

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(*c.*) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

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The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation and previous or subsequent conduct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

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The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(*c*) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(*d.*) The question is, whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate; that he consulted

vakíls in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(*e.*) A is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(*f.*) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence—'the police are coming to look for the man who robbed B,' and that immediately afterwards A ran away, are relevant.

(*g.*) The question is, whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—'I advise you not to trust A, for he owes B 10,000 rupees', and that A went away without making any answer, are relevant facts.

(*h.*) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(*i.*) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(*j.*) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant

as a dying declaration under section thirty-two, clause (one), or

as corroborative evidence under section one hundred and fifty-seven.

(*k.*) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed, without making any complaint, is not relevant as conduct under this section, though it may be relevant

as a dying declaration under section thirty-two, clause (one), or

as corroborative evidence under section one hundred and fifty-seven.

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Facts necessary to explain or introduce relevant facts.

Illustrations.

(*a.*) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(*b.*) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(*c.*) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section eight, as conduct subsequent to and affected by facts in issue.

The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(*d.*) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A—'I am leaving you because B has made me a better offer.' This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(*e.*) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it—'A says you are to hide this.' B's statement is relevant as explanatory of a fact which is part of the transaction.

(*f.*) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, any thing said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to

Things said or done by conspirator in reference to common design.

be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

When facts not otherwise relevant become relevant.

11. Facts not otherwise relevant are relevant—

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.[a]

Illustrations.

(*a.*) The question is, whether A committed a crime at Calcutta on a certain day.

The fact that, on that day, A was at Lahore is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(*b.*) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C or D, is relevant.

In suits for damages, facts tending to enable Court to determine amount are relevant.

12. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

Facts relevant when right or custom is in question.

13. Where the question is as to the existence of any right or custom, the following facts are relevant—

(*a.*) Any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence:

[a] 11 Bomb. 90.

(*b.*) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted or departed from.

Illustration.

The question is, whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcileable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

Facts showing existence of state of mind, or of body or bodily feeling.

14. Facts showing the existence of any state of mind—such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling—are relevant, when the existence of any such state of mind or body or bodily feeling, is in issue or relevant.

Explanation.—A fact relevant as showing the existence of a relevant state of mind must show that it exists, not generally, but in reference to the particular matter in question.

Illustrations.

(*a.*) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(*b.*) A is accused of fraudulently delivering to another person a piece of counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin, is relevant.

(*c.*) A sues B for damage done by a dog of B's, which B knew to be ferocious.

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(*d.*) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person.

(*e.*) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(*f.*) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(*g*) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract waswith C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(*h.*) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(*i.*) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(*j.*) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(*k.*) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty, are relevant facts.

(*l.*) The question is, whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms, are relevant facts.

(*m.*) The question is, what was the state of A's health at the time when an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question, are relevant facts.

(*n.*) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage, is relevant.

The fact that B was habitually negligent about the carriages which he let to hire, is irrelevant.

(*o*) A is tried for the murder of B by intentionally shooting him dead.

The fact that A, on other occasions, shot at B is relevant, as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them, is irrelevant.

(*p*.) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime, is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class, is irrelevant.

15. When there is a question whether an act was accidental or intentional, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Facts bearing on question whether act was accidental or intentional.

Illustrations.

(*a*.) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(*b*.) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(*c*.) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental.

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Existence of course of business when relevant.

Illustrations.

(*a*.) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(*b.*) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

Admissions.

Admission defined.

17. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Admission—by party to proceeding or his agent;

18. Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

by suitor in representative character;

Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

Statements made by—

by party interested in subject-matter;

(1.) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

by person from whom interest derived.

(2.) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements.

Admissions by persons whose position must be proved as against pary to suit.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustration.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Admissions by persons expressly referred to by party to suit.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration.

The question is, whether a horse sold by A to B is sound.

A says to B—'Go and ask C, C knows all about it.' C's statement is an admission.

Proof of admissions against persons making them, and by or on their behalf.

21. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest;[a] but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:—

(1.) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section thirty-two.

(2.) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3.) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

(*a.*) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(*b.*) A, the Captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section thirty-two, clause (two).

(*c.*) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section thirty-two, clause (two).

(*d.*) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

[a] 21 Suth. W. R. 148

(*e*.) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

When oral admissions as to contents of documents are relevant.

22. Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

Admissions in civil cases, when relevant.

23. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakíl from giving evidence of any matter of which he may be compelled to give evidence under section one hundred and twenty-six.

Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority[a] and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession to Police officer not to be proved.

25. No confession made to a Police officer, shall be proved as against a person accused of any offence.

Confession by accused while in custody of Police not to be proved against him.

26. No confession made by any person whilst he is in the custody of a Police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

How much of information received from accused may be proved.

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a Police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

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[a] 9 Bomb. 358.

28. If such a confession as is referred to in section twenty-four is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

Confession made after removal of impression caused by inducement, threat or promise, relevant.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

Confession otherwise relevant not to become irrelevant because of promise of secrecy, &c.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.[a]

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

Illustrations.

(*a.*) A and B are jointly tried for the murder of C. It is proved that A said,—'B and I murdered C.' The Court may consider the effect of this confession as against B.

(*b.*) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said,—'A and I murdered C.'

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

Admissions not conclusive proof, but may estop.

Statements by Persons who cannot be called as Witnesses.

32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

Cases in which statement of relevant fact by person who is dead or cannot be found, &c., is relevant.

(1.) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

When it relates to cause of death;

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and

[a] 10 Bomb. 499: 19 Suth. W. R., Cr. R. 23.

whatever may be the nature of the proceeding in which the cause of his death comes into question.

or is made in course of business;

(2.) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

or against interest of maker;

(3.) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

or gives opinion as to public right or custom, or matters of general interest;

(4.) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

or relates to existence of relationship;

(5.) When the statement relates to the existence of any relationship by blood, marriage or adoption[a] between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

or is made in will or deed relating to family affairs;

(6.) When the statement relates to the existence of any relationship by blood, marriage or adoption[a] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or in document relating to transaction mentioned in section 13, clause (*a*);

(7.) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section thirteen, clause (*a*).

or is made by several persons, and expresses feelings relevant to matter in question.

(8.) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(*a.*) The question is, whether A was murdered by B; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B; or

[a] See Act No. XVIII of 1872, s. 2.

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(b.) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother and delivered her of a son, is a relevant fact.

(c.) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upen specified business, is a relevant fact.

(d.) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm, by which she was chartered, to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e.) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A, saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(f.) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(g.) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day, is relevant.

(h.) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(i.) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(j.) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(k.) The question is, whether A, who is dead, was the father of B.

A statement by A that B was his son, is a relevant fact.

(l.) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m.) The question is, whether, and when, A and B were married.

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(n.) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

33. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable.[a]

Provided—

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

Statements made under special Circumstances.

Entries in books of account when relevant.

34. Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues B for Rs. 1,000, and shows entries in his account-books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

Relevancy of entry in public record, made in per-

35. An entry in the public or other official book, register, or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty

[a] *Reg.* v. *Mowjan*, 20 Suth. W. R., C. R. 69.

specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

formance of duty.

36. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Relevancy of statements in maps, charts and plans.

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the *Gazette of India*, or in the Gazette of any Local Government, or in any printed paper purporting to be the *London Gazette* or the *Government Gazette* of any colony or possession of the Queen, is a relevant fact.

Relevancy of statement as to fact of public nature, contained in certain Acts or notifications.

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

Relevancy of statements as to any law contained in law-books.

How much of a Statement is to be proved.

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book, or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

What evidence to be given when statement forms part of a conversation, document, book, or series of letters or papers.

Judgments of Courts of Justice, when relevant.

40. The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

Previous judgments relevant to bar a second suit or trial.

41. A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the

Relevancy of certain judgments in probate, &c., jurisdiction.

existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree[a] declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree[a] declared that it had ceased or should cease;

and that any thing to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree[a] declares that it had been or should be his property.

Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.

42. Judgments, orders or decrees other than those mentioned in section forty-one, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.[b]

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

Judgments, &c., other than those mentioned in sections 40—42, when relevant.

43. Judgments, orders or decrees, other than those mentioned in sections forty, forty-one and forty-two, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provision of this Act.

Illustrations.

(*a.*) A and B separately sue C for a libel which reflects upon each of them. C in each case says, that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(*b.*) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

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[a] See Act No. XVIII of 1872, s. 3.
[b] 22 Suth. W. R., C. R. 365.

(*c.*) A prosecutes B for stealing a cow from him. B is convicted.

A, afterwards, sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(*d.*) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

44. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section forty, forty-one or forty-two, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Opinions of third Persons, when relevant.

Opinions of experts.

45. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting,[a] are relevant facts.

Such persons are called experts.

Illustrations.

(*a.*) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(*b.*) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(*c.*) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

Facts bearing upon opinions of experts.

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations.

(*a.*) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

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[a] See Act No. XVIII of 1872, s. 4.

(*b.*) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

Opinion as to handwriting, when relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that is was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C nor D ever saw A write.

Opinion as to existence of right or custom, when relevant.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation.—The expression 'general custom or right' includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinions as to usages, tenets, &c., when relevant.

49. When the Court has to form an opinion as to—

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

Opinion on relationship, when relevant.

50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under section four hundred and ninety-four, four hundred and ninety-five, four hundred and ninety-seven or four hundred and ninety-eight of the Indian Penal Code.

Illustrations.

(*a.*) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(*b.*) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

Grounds of opinion, when relevant.

51. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

Character when relevant.

In civil cases character to prove conduct imputed, irrelevant.

52. In civil cases, the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant.

In criminal cases, previous good character relevant.

53. In criminal proceedings, the fact that the person accused is of a good character, is relevant.

In criminal proceedings previous conviction relevant, but not previous bad character, except in reply.

54. In criminal proceedings, the fact that the accused person has been previously convicted of any offence is relevant; but the fact that he has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Character as affecting damages.

55. In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Explanation.—In sections fifty-two, fifty-three, fifty-four and fifty-five, the word 'character' includes both reputation and disposition; but evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

PART II.—ON PROOF.

CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.

Fact judicially noticeable need not be proved.

56. No fact of which the Court will take judicial notice need be proved.

Facts of which Court must take judicial notice.

57. The Court shall take judicial notice of the following facts:—

(1.) All laws or rules having the force of law now or heretofore in force or hereafter to be in force, in any part of British India:

(2.) All public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed:

(3.) Articles of War for Her Majesty's Army or Navy:

(4.) The course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils Act, or any other law for the time being relating thereto:

Explanation.—The word 'Parliament,' in clauses (two) and (four) includes—

1. The Parliament of the United Kingdom of Great Britain and Ireland;
2. The Parliament of Great Britain;
3. The Parliament of England;
4. The Parliament of Scotland; and
5. The Parliament of Ireland:

(5.) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland:

(6.) All seals of which English Courts take judicial notice: the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor General or any Local Government in Council: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India:

(7.) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the *Gazette of India*, or in the official Gazette of any Local Government:

(8.) The existence, title, and national flag of every State or Sovereign recognized by the British Crown:

(9.) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the official Gazette:

(10.) The territories under the dominion of the British Crown:

(11.) The commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons:

(12.) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attornies, proctors, vakíls, pleaders and other persons authorized by law to appear or act before it:

(13.) The rule of the road on land or at sea.[a]

In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Facts admitted need not be proved.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

Chapter IV.—Of Oral Evidence.

Proof of facts by oral evidence.

59. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

60. Oral evidence must, in all cases, whatever, be direct; that is to say—

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

[a] See Act No. XVIII of 1872, s. 5.

If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

Chapter V.—Of documentary Evidence.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document:

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

63. Secondary evidence means and includes—

(1.) Certified copies given under the provisions hereinafter contained;

(2.) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3.) Copies made from or compared with the original;

(4.) Counterparts of documents as against the parties who did not execute them;

(5.) Oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(*a.*) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(*b.*) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(*c.*) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(*d.*) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition or contents of a document in the following cases:—

(*a.*) When the original is shown or appears to be in the possession or power

of the person against whom the document is sought to be proved, or

of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it,

and when, after the notice mentioned in section sixty-six, such person does not produce it;

(*b.*) When the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(*c.*) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(*d.*) When the original is of such a nature as not to be easily moveable;

(*e.*) When the original is a public document within the meaning of section seventy-four;

(*f.*) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence;

(*g.*) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (*a*), (*c*) and (*d*), any secondary evidence of the contents of the document is admissible.

In case (*b*), the written admission is admissible.

In case (*e*) or (*f*), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (*g*), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

Rules as to notice to produce.

66. Secondary evidence of the contents of the documents referred to in section sixty-five, clause (*a*), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader,[a] such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—

(1.) When the document to be proved is itself a notice;

(2.) When, from the nature of the case, the adverse party must know that he will be required to produce it;

(3.) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(4.) When the adverse party or his agent has the original in Court;

(5.) When the adverse party or his agent has admitted the loss of the document;

(6.) When the person in possession of the document is out of reach of, or not subject to, the process of the Court.

Proof of signature and handwriting

67. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the

[a] See Act No. XVIII of 1872, s. 6.

document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

of person alleged to have signed or written document produced.

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.

Proof of execution of document required by law to be attested.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Proof where no attesting witness found.

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Admission of execution by party to attested document.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof when attesting witness denies the execution.

72. An attested document not required by law to be attested may be proved as if it was unattested.

Proof of document not required by law to be attested.

73. In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

Comparison of signature, writing or seal with others admitted or proved.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

Public Documents.

74. The following documents are public documents :—

Public documents.

1. Documents forming the acts, or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country.

2. Public records kept in British India of private documents.

Private documents.

75. All other documents are private.

Certified copies of public documents.

76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal ; and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Proof of documents by production of certified copies.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official documents.

78. The following public documents may be proved as follows :—

(1.) Acts, orders or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government,

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government :

(2.) The proceedings of the Legislatures,

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government :

(3.) Proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,

by copies or extracts contained in the *London Gazette,* or purporting to be printed by the Queen's Printer.

(4.) The acts of the Executive or the proceedings of the legislature of a foreign country,

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or

sovereign, or by a recognition thereof in some public Act of the Governor General of India in Council:

(5.) The proceedings of a municipal body in British India,

by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body:

(6.) Public documents of any other class in a foreign country,

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Presumptions as to Documents.

Presumption as to genuineness of certified copies.

79. The Court shall presume every document purporting to be a certificate, certified copy, or other document, which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor General in Council, to be genuine: Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such paper.

Presumption as to documents produced as record of evidence.

80. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

Presumption as to Gazettes, newspapers, private Acts

81. The Court shall presume the genuineness of every document purporting to be the *London Gazette* or the *Gazette of India*, or the Government Gazette of any Local Government, or of any colony, dependency or possession

of Parliament and other documents.

of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person if such document is kept substantially in the form required by law and is produced from proper custody.

Presumption as to document admissible in England without proof of seal or signature.

82. When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

Presumption as to maps or plans made by authority of Government.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Presumption as to collections of laws and reports of decisions.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

and of every book purporting to contain reports of decisions of the Courts of such country.

Presumption as to powers of-attorney.

85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty or of the Government of India, was so executed and authenticated.

Presumption as to certified copies of foreign judicial records.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India resident in such country to be the manner commonly in use in that country for the certification of copies of judicial records.

Presumption as to books, maps and charts.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for

its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to telegraphic messages.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to due execution, &c., of documents not produced.

89. The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

Presumption as to documents thirty years old.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section eighty-one.

Illustrations.

(*a*). A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.

(*b*). A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(*c*). A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody is proper.

Chapter VI.—Of the Exclusion of Oral by Documentary Evidence.

Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself,

or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills admitted to probate in British India[a] may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(*a*). If a contract be contained in several letters, all the letters in which it is contained must be proved.

(*b*). If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(*c*). If a bill of exchange is drawn in a set of three, one only need be proved.

(*d*). A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(*e*) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

Exclusion of evidence of oral agreement.

92. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating

[a] See Act No. XVIII of 1872, s. 7.

thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso (2).—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3).—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(*a.*) A policy of insurance is effected on goods "in ships from Calcutta to London." The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy, cannot be proved.

(*b.*) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March, cannot be proved.

(*c.*) An estate called 'the Rámpur tea estate' is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed, cannot be proved.

(*d.*) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(*e.*) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(*f.*) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(*g.*) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: 'Bought of A a horse for Rs. 500.' B may prove the verbal warranty.

(*h.*) A hires lodgings of B, and gives B a card on which is written—'Rooms, Rs. 200 a month.' A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.

(*i.*) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(*j.*) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations.

(*a.*) A agrees, in writing, to sell a horse to B for 'Rs. 1,000, or Rs. 1,500.'

Evidence cannot be given to show which price was to be given.

(*b.*) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Exclusion of evidence against application of document to existing facts.

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration.

A sells to B, by deed, 'my estate at Rámpur containing 100 bíghás.' A has an estate at Rámpur containing 100 bíghás. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

Evidence as to document in unmeaning reference to existing facts.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration.

A sells to B, by deed, 'my house in Calcutta.'

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Evidence as to application of language which can apply to one only of several persons.

Illustrations.

(*a.*) A agrees to sell to B, for Rs. 1,000, 'my white horse.' A has two white horses. Evidence may be given of facts which show which of them was meant.

(*b.*) A agrees to accompany B to Haidarábád. Evidence may be given of facts showing whether Haidarábád in the Dekkhan or Haidarábád in Sindh was meant.

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

Illustration.

A agrees to sell to B 'my land at X in the occupation of Y.' A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local, and provincial expressions, of abbreviations and of words used in a peculiar sense.

Evidence as to meaning of illegible characters, &c.

Illustration.

A, a sculptor, agrees to sell to B 'all my mods.' A has both models and modelling tools. Evidence may be given to show which he meant to sell.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Who may give evidence of agreement varying terms of document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

100. Nothing in this chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865) as to the construction of wills.

Saving of provisions of Indian Succession Act relating to wills.

PART III.—PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.—OF THE BURDEN OF PROOF.

Burden of proof.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(*a.*) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(*b.*) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

On whom burden of proof lies.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(*a.*) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(*b.*) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

Burden of proof as to particular fact.

103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.

(*a.*) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Burden of proving fact to be proved to make evidence admissible.

Illustrations.

(*a.*) A wishes to prove a dying declaration by B. A must prove B's death.

(*b*) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Burden of proving that case of accused comes within exceptions.

Illustrations.

(*a.*) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(*b.*) A, accused of murder, alleges that, by grave and sudden provoc on, he was deprived of the power of self-control.

The burden of proof is on A.

(*c.*) Section three hundred and twenty-five of the Indian Penal Code provides that whoever, except in the case provided for by section three hundred and thirty-five, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section three hundred and twenty-five.

The burden of proving the circumstances bringing the case under section three hundred and thirty-five lies on A.

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Burden of proving fact especially within knowledge.

Illustrations.

(*a*) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(*b.*) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Burden of proving death of person known to have been alive within thirty years.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

108. Provided that when[a] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to[b] the person who affirms it.

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Burden of proof as to ownership.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Proof of good faith in transactions where one party is in relation of active confidence.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(*a.*) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(*b.*) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Birth during marriage, conclusive proof of legitimacy.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Proof of cession of territory.

113. A notification in the *Gazette of India* that any portion of British territory has been ceded to any Native State, Prince or Ruler,[c] shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

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a, b See Act No. XVIII of 1872, s. 9.

c See, for example, *Gazette of India*, 4th January 1873, p. 2.

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Court may presume existence of certain facts.

Illustrations.

The Court may presume—

(*a.*) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(*b.*) That an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(*c.*) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(*d.*) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;

(*e.*) That judicial and official acts have been regularly performed;

(*f.*) That the common course of business has been followed in particular cases;

(*g.*) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(*h.*) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

(*i.*) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:—

As to illustration (*a*)—A shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;

As to illustration (*b*).—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself:

As to illustration (*b*)—A crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable:

As to illustration (*c*)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence:

As to illustration (*d*)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course:

As to illustration (*e*)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances:

As to illustration (*f*)—The question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances:

As to illustration (*g*)—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family:

As to illustration (*h*)—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked:

As to illustration (*i*)—A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.—ESTOPPEL.

Estoppel.

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Estoppel of tenant;

and of licensee of person in possession.

116. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person who came upon any immoveable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license. Estoppel of acceptor of bill of exchange, bailee or licensee.

Explanation (1).—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (2).—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.—OF WITNESSES.

118. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Who may testify.

Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence. Dumb witnesses.

120. In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness. Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial.

121. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting. Judges and Magistrates.

Illustrations.

(*a*) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(*b.*) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(*c.*) A is accused before the Court of Session of attempting to murder a Police officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

Communications during marriage.

122. No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Evidence as to affairs of State.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Official communications.

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Information as to commission of offences.

125. No Magistrate or Police officer shall be compelled to say whence he got any information as to the commission of any offence.

Professional communications.

126. No barrister, attorney, pleader or vakíl, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakíl, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) Any such communication made in furtherance of any illegal[a] purpose;

(2) Any fact observed by any barrister, pleader, attorney or vakíl, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader,[b] attorney or vakíl was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

[a, b] See Act No. XVIII of 1872, s. 10.

Illustrations.

(*a*) A, a client, says to B, an attorney—'I have committed forgery, and I wish you to defend me.'

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(*b.*) A, a client, says to B, an attorney—'I wish to obtain possession of property by the use of a forged deed on which I request you to sue.'

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(*c.*) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

127. The provisions of section one hundred and twenty-six shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakíls. Section 126 to apply to interpreters, &c.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section one hundred and twenty-six; and if any party to a suit or proceeding calls any such barrister, pleader,[a] attorney or vakíl as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakíl on matters which, but for such question, he would not be at liberty to disclose. Privilege not waived by volunteering evidence.

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others. Confidential communications with legal advisers.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims. Production of title-deeds of witness not a party.

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[a] See Act No. XVIII of 1872, s. 10.

Production of documents which another person, having possession, could refuse to produce.

131. No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

Witness not excused from answering on ground that answer will criminate.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Proviso.

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Accomplice.

133. An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Number of witnesses.

134. No particular number of witnesses shall in any case be required for the proof of any fact.

Chapter X.—Of the Examination of Witnesses.

Order of production and examination of witnesses.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Judge to decide as to admissibility of evidence.

136. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(*a.*) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section thirty-two.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(*b.*) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(*c.*) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(*d.*) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C or D is proved, or may require proof of B, C and D before permitting proof of A.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief. Examination-in-chief.

The examination of a witness by the adverse party shall be called his cross-examination. Cross-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination. Re-examination.

138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined. Order of examinations. Direction of re-examination.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness. Cross-examination of person called to produce a document.

Witnesses to character.

140. Witnesses to character may be cross-examined and re-examined.

Leading questions.

141. Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.

When they must not be asked.

142. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked.

143. Leading questions may be asked in cross-examination.

Evidence as to matters in writing.

144. Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether A assaulted B.

C deposes that he heard A say to D—'B wrote a letter accusing me of theft, and I will be revenged on him.' This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

Cross-examination as to previous statements in writing.

145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Questions lawful in cross-examination.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend

(1) to test his veracity;

(2) to discover who he is, and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section one hundred and thirty-two shall apply thereto.

When witness to be compelled to answer.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:—

Court to decide when question shall be asked and when witness compelled to answer.

(1.) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(2.) Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(3.) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence:

(4.) The Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

149. No such question as is referred to in section one hundred and forty-eight ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Question not to be asked without reasonable grounds.

Illustrations.

(*a.*) A barrister is instructed by an attorney or vakíl that an important witness is a dákáit. This is a reasonable ground for asking the witness whether he is a dákáit.

(*b.*) A pleader is informed by a person in Court that an important witness is a dákáit. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dákáit.

(*c.*) A witness, of whom nothing whatever is known, is asked at random whether he is a dákáit. There are here no reasonable grounds for the question.

(*d.*) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dákáit.

Procedure of Court in case of question being asked without reasonable grounds.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakíl or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakíl or attorney is subject in the exercise of his profession.

Indecent and scandalous questions.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Questions intended to insult or annoy.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Exclusion of evidence to contradict answers to questions testing veracity.

153. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(*a.*) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(*b.*) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(*c.*) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(*d.*) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Question by party to his own witness.

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

Impeaching credit of witness.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him :—

(1.) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2.) By proof that the witness has been bribed, or has accepted[a] the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3.) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

(4.) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(*a*). A sues B for the price of goods sold and delivered to B.

C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(*b.*) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

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[a] See Act No. XVIII of 1872, s. 11.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

Questions tending to corroborate evidence of relevant fact, admissible.

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Former statements of witness may be proved to corroborate later testimony as to same fact.

157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

What matters may be proved in connection with proved statement relevant under section 32 or 33.

158. Whenever any statement, relevant under section thirty-two or thirty-three, is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

Refreshing memory.

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

When witness may use copy of document to refresh memory.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document : Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

Testimony to facts stated in document

160. A witness may also testify to facts mentioned in any such document as is mentioned in section one hundred and fifty-nine, although he has no

specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document. mentioned in section 159.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

161. Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon. Right of adverse party as to writing used to refresh memory.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court. Production of documents.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and if the interpreter disobeys such direction, he shall be held to have committed an offence under section one hundred and sixty-six of the Indian Penal Code. Translation of documents.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so. Giving, as evidence, of document called for and produced on notice.

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court. Using, as evidence, of document production of which was refused on notice.

Illustration.

A sues B on an agreement and gives B notice to produce it. At the trial, A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

165. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may Judge's power to put questions or

order production.

order the production of any document or thing: and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections one hundred and twenty-one to one hundred and thirty-one both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section one hundred and forty-eight or one hundred and forty-nine; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

Power of jury or assessors to put questions.

166. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

Chapter XI.—Of Improper Admission and Rejection of Evidence.

No new trial for improper admission or rejection of evidence.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

SCHEDULE.

ENACTMENTS REPEALED.

[*See section* 2.]

Number and year.	TITLE.	Extent of repeal.
Stat. 26 Geo. III, cap. 57.	For the further regulation of the trial of persons accused of certain offences committed in the East Indies; for repealing so much of an Act, made in the twenty-fourth year of the reign of his present Majesty (intituled 'An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India, and for establishing a court of judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies'), as requires the servants of the East India Company to deliver inventories of their estates and effects; for rendering the laws more effectual against persons unlawfully resorting to the East Indies; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.	Section thirty-eight so far as it relates to Courts of justice in the East Indies.
Stat. 14 & 15 Vic., cap. 99.	To amend the Law of Evidence ...	Section eleven, and so much of section nineteen as relates to British India.
Act XV of 1852 ...	To amend the Law of Evidence ...	So much as has not been heretofore repealed.
Act XIX of 1853 ...	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section nineteen.
Act II of 1855 ...	For the further improvement of the Law of Evidence.	So much as has not been heretofore repealed.
Act XXV of 1861 ...	For simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter.	Section two hundred and thirty-seven.
Act I of 1868 ...	The General Clauses Act, 1868 ...	Sections seven and eight.

ACT No. III of 1872.

Received the Governor General's assent on the 22nd March 1872.

An Act to provide a form of Marriage in certain cases.

Preamble.

WHEREAS it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindú, Muhammadan, Pársí, Buddhist, Sikh or Jaina religion, and to legalize certain marriages the validity of which is doubtful; It is hereby enacted as follows:—

Local extent.

1. This Act extends to the whole of British India.

Conditions upon which marriages under Act may be celebrated.

2. Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindú or the Muhammadan, or the Pársí or the Buddhist, or the Sikh or the Jaina religion, upon the following conditions:—

(1). Neither party must, at the time of the marriage, have a husband or wife living:

(2). The man must have completed his age of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar:

(3). Each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage:

(4). The parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

1st Proviso.—No such law or custom, other than one relating to consanguinity or affinity, shall prevent them from marrying.

2nd Proviso.—No law or custom as to consanguinity shall prevent them from marrying, unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than that of great-great-grand-father or great-great-grand-mother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other.

Appointment of Marriage Registrars.

3. The Local Government may appoint one or more Registrars under this Act,[a] either by name or as holding any office for the time being, for any portion of the territory subject to its administration. The officer so appointed shall be called 'Registrar of Marriages under Act III of 1872,' and is hereinafter referred to as the 'Registrar.' The portion of territory for which any such officer is appointed shall be deemed his district.

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[a] See *Calcutta Gazette*, 22nd May 1872, p. 2321.
Bombay Government Gazette, 26th September 1872, p. 1046:
Fort St. George Gazette, 24th December 1872, p. 2064:

4. When a marriage is intended to be solemnized under this Act, one of the parties must give notice in writing to the Registrar, before whom it is to be solemnized.

One of the parties to intended marriage to give notice to Registrar.

The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given.

Such notice may be in the form given in the first schedule to this Act.

5. The Registrar shall file all such notices and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished to him by the Government, to be called the "Marriage Notice Book under Act III of 1872," and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

Notice to be filed and copy entered in the Marriage Notice Book.

6. Fourteen days after notice of an intended marriage has been given under section four, such marriage may be solemnized, unless it has been previously objected to in the manner hereinafter mentioned.

Objection to marriage.

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clause (1), (2), (3) or (4) of section two.

The nature of the objection made shall be recorded in writing by the Registrar in the register, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

7. On receipt of such notice of objection the Registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, until the lapse of fourteen days from the opening of such Court.

Procedure on receipt of objection.

The person objecting to the intended marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree, declaring that such marriage would contravene some one or more of the conditions prescribed in clause (1), (2), (3) or (4) of section two.

Objector may file suit.

8. The officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed. If such certificate be lodged with the Registrar within fourteen days from the receipt of notice of objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, within

Certificate of filing of suit to be lodged with Registrar.

fourteen days of the opening of such Court, the marriage shall not be solemnized till the decision of such Court has been given and the period allowed by law for appeals from such decision has elapsed; or, if there be an appeal from such decision, till the decision of the Appellate Court has been given.

If such certificate be not lodged in the manner and within the period prescribed in the last preceding paragraph, or if the decision of the Court be that such marriage would not contravene any one or more of the conditions prescribed in clause (1), (2), (3) or (4) of section two, such marriage may be solemnized.

If the decision of such Court be that the marriage in question would contravene any one or more of the conditions prescribed in clause (1), (2), (3) or (4) of section two, the marriage shall not be solemnized.

Court may fine when objection not reasonable.

9. Any Court in which any such suit as is referred to in section seven is filed, may, if it shall appear to it that the objection was not reasonable and *bonâ fide*, inflict a fine, not exceeding one thousand rupees, on the person objecting, and award it, or any part of it, to the parties to the intended marriage.

Declaration by parties and witnesses.

10. Before the marriage is solemnized, the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form contained in the second schedule to this Act. If either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her father or guardian, except in the case of a widow, and, in every case, it shall be countersigned by the Registrar.

Marriage how to be solemnized.

11. The marriage shall be solemnized in the presence of the Registrar and of the three witnesses who signed the declaration. It may be solemnized in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, 'I, [*A*,] take thee, [*B*,] to be my lawful wife (*or* husband).'

Place where marriage may be solemnized.

12. The marriage may be celebrated either at the office of the Registrar or at such other place, within reasonable distance of the office of the Registrar, as the parties desire: Provided that the Local Government may prescribe the conditions under which such marriages may be solemnized at places other than the Registrar's office,[a] and the additional fees to be paid thereupon.

Certificate of marriage.

13. When the marriage has been solemnized, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the 'Marriage Certificate Book under Act III of 1872,' in the form given in the third schedule to this Act, and such certificate shall be signed by the parties to the marriage and the three witnesses.

See *Calcutta Gazette*, 22nd May 1872, p. 2322

14. The Local Government shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act.[a] Fees.

The Registrar may, if he think fit, demand payment of any such fee before solemnization of the marriage or performance of any other duty in respect of which it is payable.

The said Marriage Certificate Book shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall on application be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the Local Government for each such extract.

15. Every person who, being at the time married, procures a marriage of himself to be solemnized under this Act, shall be deemed to have committed an offence under section four hundred and ninety-four or section four hundred and ninety-five of the Indian Penal Code, as the case may be; and the marriage so solemnized is void. Penalty on married person marrying again under Act.

16. Every person married under this Act who, during the life-time of his or her wife or husband, contracts any other marriage, shall be subject to the penalties provided in sections four hundred and ninety-four and four hundred and ninety-five of the Indian Penal Code for the offence of marrying again during the life-time of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage. Punishment of bigamy.

17. The Indian Divorce Act shall apply to all marriages contracted under this Act, and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clause (1), (2), (3) or (4) of section two of this Act. Indian Divorce Act to apply.

18. The issue of marriages solemnized under this Act shall, if they marry under this Act, be deemed to be subject to the law to which their fathers were subject as to the prohibition of marriages by reason of consanguinity and affinity, and the provisoes to section two of this Act shall apply to them. Law to apply to issue of marriages under Act.

19. Nothing in this Act contained shall affect the validity of any marriage not solemnized under its provisions; nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage; but if the validity of any such mode shall hereafter come into question before any Court, such question shall be decided as if this Act had not been passed. Saving of marriages solemnized otherwise than under Act.

[a] See *Calcutta Gazette*, 22nd May 1872, p. 2322;
Bombay Government Gazette, 26th September 1872, p. 1017;
Fort St. George Gazette, 24th December 1872, p. 2064.

20. [*Repealed by Act No. XII of* 1876.]

Penalty for signing declarations or certificates containing false statements.

21. Every person making, signing or attesting any declaration or certificate prescribed by this Act, containing a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of the offence described in section one hundred and ninety-nine of the Indian Penal Code.

FIRST SCHEDULE.

(*See section* 4).

NOTICE OF MARRIAGE.

To a Registrar of Marriages under Act III of 1872 for the District.

I hereby give you notice that a marriage under Act III of 1872 is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say) :—

Names.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.
A B	*Unmarried. Widower.*	*Landowner.*	*Of full age.*	.....	23 *days.*
C D	*Spinster.*	...	*Minor.*	...	...

Witness my hand, this day of 187 .

(Signed) *A B.*

SECOND SCHEDULE.

(*See section* 10).

Declaration to be made by the Bridegroom.

I, *A B*, hereby declare as follows :—

1. I am at the present time unmarried :

2. I do not profess the Christian, Jewish, Hindú, Muhammadan, Pársí, Buddhist, Sikh or Jaina religion:

3. I have completed my age of eighteen years:

4. I am not related to *C D* [*the bride*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *C D* is subject, and subject to the provisoes of clause (4) of section two of Act III of 1872, render a marriage between us illegal:

[*And when the bridegroom has not completed his age of twenty-one years*:

5. The consent of my father [*or* guardian, *as the case may be*] has been given to a marriage between myself and *C D*, and has not been revoked:]

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) *A B* [*the bridegroom*].

Declaration to be made by the Bride.

I, *C D*, hereby declare as follows:—

1. I am at the present time unmarried:

2. I do not profess the Christian, Jewish, Hindú, Muhammadan, Pársí, Buddhist, Sikh or Jaina religion:

3. I have completed my age of fourteen years:

4. I am not related to *A B* [*the bridegroom*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *A B* is subject, and subject to the provisoes of clause (4) of section two of Act III of 1872, render a marriage between us illegal:

[*And when the bride has not completed her age of twenty-one years, unless she is a widow*:

5. The consent of *M N* my father [*or* guardian, *as the case may be*], has been given to a marriage between myself and *A B*, and has not been revoked:]

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) *C D* [*the bride*].

Signed in our presence by the above-named *A B* and *C D*:

G H,
I J, } [*three witnesses*].
K L,

[*And when the bridegroom or bride has not completed the age of twenty-one years, except in the case of a widow*:

Signed in my presence and with my consent by the above-named *A B* and *C D*;

M N, the father [*or* guardian] of the above-named *A B* [or *C D, as the case may be*)].

(*Countersigned*) *E F*,

Registrar of Marriages under Act III of 1872 *for the District of*

Dated the day of 18 .

THIRD SCHEDULE.

(*See section* 13).

Registrar's Certificate.

I, *E F*, certify that, on the of 18 appeared before me *A B* and *C D*, each of whom in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by Act III of 1872, and that a marriage under the said Act was solemnized between them in my presence.

(*Signed*) *E F*,

Registrar of Marriages under Act III of 1872 *for the District of*

(*Signed*) *A B*,
C D,

G H,
I J, } [*three witnesses*].
K L,

Dated the day of 18 .

THE INDIAN CONTRACT ACT, 1872.

CONTENTS.

Preamble.

PRELIMINARY.

SECTIONS.

1. Short title.
   Extent.
   Commencement.
   Enactments repealed.
2. Interpretation-clause.

CHAPTER I.—OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS.

3. Communication, acceptance and revocation of proposals.
4. Communication when complete.
5. Revocation of proposals and acceptances.
6. Revocation how made.
7. Acceptance must be absolute.
8. Acceptance by performing conditions, or receiving consideration.
9. Promises, express and implied.

CHAPTER II.—OF CONTRACTS, VOIDABLE CONTRACTS, AND VOID AGREEMENTS.

10. What agreements are contracts.
11. Who are competent to contract.
12. What is a sound mind for the purposes of contracting.
13. 'Consent' defined.
14. 'Free consent' defined.
15. 'Coercion' defined.
16. 'Undue influence' defined.
17. 'Fraud' defined.
18. 'Misrepresentation' defined.
19. Voidability of agreements without free consent.
20. Agreement void where both parties are under mistake as to matter of fact.
21. Effect of mistakes as to law.
22. Contract caused by mistake of one party as to matter of fact.
23. What considerations and objects are lawful, and what not.

Void Agreements.

SECTIONS.

24. Agreements void, if considerations and objects unlawful in part.
25. Agreement without consideration, void, unless—
it is in writing and registered,
or is a promise to compensate for something done,
or is a promise to pay a debt barred by limitation law.
26. Agreement in restraint of marriage, void.
27. Agreement in restraint of trade, void.
Saving of agreement not to carry on business of which good-will is sold;
of agreement between partners prior to dissolution;
or during continuance of partnership.
28. Agreements in restraint of legal proceedings, void.
Saving of contract to refer to arbitration dispute that may arise.
Suits barred by such contracts.
Saving of contract to refer questions that have already arisen.
29. Agreements void for uncertainty.
30. Agreements by way of wager, void.
Exception in favour of certain prizes for horse-racing.
Section 294A of the Indian Penal Code not affected.

CHAPTER III.—OF CONTINGENT CONTRACTS.

31. 'Contingent contract' defined.
32. Enforcement of contracts contingent on an event happening.
33. Enforcement of contracts contingent on an event not happening.
34. When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.
35. When contracts become void, which are contingent on happening of specified event within fixed time.
When contracts may be enforced, which are contingent on specified event not happening within fixed time.
36. Agreements contingent on impossible events, void.

CHAPTER IV.—OF THE PERFORMANCE OF CONTRACTS.

Contracts which must be performed.

37. Obligation of parties to contracts.
38. Effect of refusal to accept offer of performance.
39. Effect of refusal of party to perform promise wholly.

By whom Contracts must be performed.

40. Person by whom promise is to be performed.
41. Effect of accepting performance from third person.
42. Devolution of joint liabilities.

SECTIONS.

43. Any one of joint promisors may be compelled to perform.
Each promisor may compel contribution.
Sharing of loss by default in contribution.
44. Effect of release of one joint promisor.
45. Devolution of joint rights.

Time and place for Performance.

46. Time for performance of promise, where no application is to be made and no time is specified.
47. Time and place for performance of promise on certain day, and no application to be made.
48. Application for performance on certain day to be at proper time and place.
49. Place for performance of promise, where no application to be made and no place fixed for performance.
50. Performance in manner or at time prescribed or sanctioned by promisee.

Performance of Reciprocal Promises.

51. Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.
52. Order of performance of reciprocal promises.
53. Liability of party preventing event on which contract is to take effect.
54. Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises.
55. Effect of failure to perform at fixed time, on contract in which time is essential.
Effect of such failure when time is not essential.
Effect of acceptance of performance at time other than that agreed upon.
56. Agreement to do impossible act.
Contract to do act afterwards becoming impossible or unlawful.
Compensation for loss through non-performance of act known to be impossible or unlawful.
57. Reciprocal promises to do things legal, and also other things illegal.
58. Alternative promise, one branch being illegal.

Appropriation of Payments.

59. Application of payment where debt to be discharged is indicated.
60. Application of payment where debt to be discharged is not indicated.
61. Application of payment where neither party appropriates.

Contracts which need not be performed.

62. Effect of novation, rescission and alteration of contract.
63. Promisee may dispense with or remit performance of promise.

SECTIONS.

64. Consequences of rescission of voidable contract.
65. Obligation of person who has received advantage under void agreement, or contract that becomes void.
66. Mode of communicating or revoking rescission of voidable contract.
67. Effect of neglect of promisee to afford promisor reasonable facilities for performance.

CHAPTER V.—OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

68. Claim for necessaries supplied to person incapable of contracting, or on his account.
69. Reimbursement of person paying money due by another, in payment of which he is interested.
70. Obligation of person enjoying benefit of non-gratuitous act.
71. Responsibility of finder of goods.
72. Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.

CHAPTER VI.—OF THE CONSEQUENCES OF BREACH OF CONTRACT.

73. Compensation for loss or damage caused by breach of contract.
Compensation for failure to discharge obligation resembling those created by contract.
74. Title to compensation for breach of contract in which a sum is named as payable in case of breach.
75. Party rightfully rescinding contract, entitled to compensation.

CHAPTER VII.—SALE OF GOODS.

When Property in Goods sold passes.

76. 'Goods' defined.
77. 'Sale' defined.
78. Sale how effected.
79. Transfer of ownership of thing sold, which has yet to be ascertained, made or finished.
80. Completion of sale of goods which the seller is to put into state in which buyer is to take them.
81. Completion of sale of goods, when seller has to do anything thereto in order to ascertain price.
82. Completion of sale, when goods are unascertained at date of contract.
83. Ascertainment of goods by subsequent appropriation.
84. Ascertainment of goods by seller's selection.

SECTIONS.

85. Transfer of ownership of moveable property, when sold together with immoveable.
86. Buyer to bear loss after goods have become his property.
87. Transfer of ownership of goods agreed to be sold while non-existent.
88. Contract to sell and deliver, at a future day, goods not in seller's possession at date of contract.
89. Determination of price not fixed by contract.

Delivery.

90. Delivery how made.
91. Effect of delivery to wharfinger or carrier.
92. Effect of part-delivery.
93. Seller not bound to deliver until buyer applies for delivery.
94. Place of delivery.

Seller's Lien.

95. Seller's lien.
96. Lien where payment to be made at a future day, but no time fixed for delivery.
'Insolvency' defined.
97. Seller's lien where payment to be made at future day, and buyer allows goods to remain in seller's possession.
98. Seller's lien against subsequent buyer.

Stoppage in Transit.

99. Power of seller to stop in transit.
100. When goods are to be deemed in transit.
101. Continuance of right of stoppage.
102. Cessation of right on assignment, by buyer, of bill of lading.
103. Stoppage where bill of lading is pledged to secure specific advance.
104. Stoppage how effected.
105. Notice of seller's claim.
106. Right of seller on stoppage.

Resale.

107. Resale on buyer's failure to perform.

Title.

108. Title conveyed by seller of goods to buyer.

Warranty.

109. Seller's responsibility for badness of title.
110. Establishment of implied warranty of goodness or quality.
111. Warranty of soundness implied on sale of provisions.
112. Warranty of bulk implied on sale by sample.
113. Warranty implied where goods are sold as being of a certain denomination.

SECTIONS.

114. Warranty where goods ordered for a specified purpose.
115. Warranty on sale of article of well-known ascertained kind.
116. Seller when not responsible for latent defects.
117. Buyer's right on breach of warranty.
118. Right of buyer on breach of warranty in respect of goods not ascertained.

Miscellaneous.

119. When buyer may refuse to accept, if goods not ordered are sent with goods ordered.
120. Effect of wrongful refusal to accept.
121. Right of seller as to rescission, on failure of buyer to pay price at time fixed.
122. Sale and transfer of lots sold by auction.
123. Effect of use, by seller, of pretended biddings to raise price.

CHAPTER VIII.—OF INDEMNITY AND GUARANTEE.

124. 'Contract of indemnity' defined.
125. Rights and liabilities of indemnity-holder, when sued.
126. 'Contract of guarantee,' 'surety,' 'principal debtor,' and 'creditor.'
127. Consideration for guarantee.
128. Surety's liability.
129. 'Continuing guarantee.'
130. Revocation of continuing guarantee.
131. Revocation of continuing guarantee by surety's death.
132. Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on other's default.
133. Discharge of surety by variance in terms of contract.
134. Discharge of surety by release or discharge of principal debtor.
135. Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.
136. Surety not discharged when contract made with third person to give time to principal.
137. Creditor's forbearance to sue does not discharge surety.
138. Release of one co-surety does not discharge others.
139. Discharge of surety by creditor's act or omission impairing surety's eventual remedy.
140. Rights of surety on payment or performance.
141. Surety's right to benefit of creditor's securities.
142. Guarantee obtained by misrepresentation, invalid.
143. Guarantee obtained by concealment, invalid.
144. Guarantee on contract that creditor shall not act on it until co-surety joins.
145. Implied promise to indemnify surety.
146. Co-sureties liable to contribute equally.
147. Liability of co-sureties bound in different sums.

CHAPTER IX.—Of Bailment.

Sections.

148. 'Bailment,' 'bailor,' and 'bailee' defined.
149. Delivery to bailee how made.
150. Bailor's duty to disclose faults in goods bailed.
151. Care to be taken by bailee.
152. Bailee when not liable for loss, &c., of thing bailed.
153. Termination of bailment by bailee's act inconsistent with conditions.
154. Liability of bailee making unauthorized use of goods bailed.
155. Effect of mixture, with bailor's consent, of his goods with bailee's.
156. Effect of mixture, without bailor's consent, when the goods can be separated.
157. Effect of mixture, without bailor's consent, when the goods cannot be separated.
158. Re-payment, by bailor, of necessary expenses.
159. Restoration of goods lent gratuitously.
160. Return of goods bailed, on expiration of time or accomplishment of purpose.
161. Bailee's responsibility when goods are not duly returned.
162. Termination of gratuitous bailment by death.
163. Bailor entitled to increase or profit from goods bailed.
164. Bailor's responsibility to bailee.
165. Bailment by several joint owners.
166. Bailee not responsible on re-delivery to bailor without title.
167. Right of third person claiming goods bailed.
168. Right of finder of goods.
May sue for specific reward offered.
169. When finder of thing commonly on sale may sell it.
170. Bailee's particular lien.
171. General lien of bankers, factors, wharfingers, attorneys and policy-brokers.

Bailments of Pledges.

172. 'Pledge,' 'pawnor,' and 'pawnee' defined.
173. Pawnee's right of retainer.
174. Pawnee not to retain for debt or promise other than that for which goods pledged.
Presumption in case of subsequent advances.
175. Pawnee's right as to extraordinary expenses incurred.
176. Pawnee's right where pawnor makes default.
177. Defaulting pawnor's right to redeem.
178. Pledge by possessor of goods, or of documentary title to goods.
179. Pledge where pawnor has only a limited interest.

Suits by Bailees or Bailors against Wrong-doers.

180. Suit by bailor or bailee against wrong-doer.
181. Apportionment of relief or compensation obtained by such suits.

CHAPTER X.—AGENCY.

Appointment and Authority of Agents.

SECTIONS.

182. 'Agent' and 'principal' defined.
183. Who may employ agent.
184. Who may be an agent.
185. Consideration not necessary.
186. Agent's authority may be expressed or implied.
187. Definitions of express and implied authority.
188. Extent of agent's authority.
189. Agent's authority in an emergency.

Sub-Agents.

190. When agent cannot delegate.
191. 'Sub-agent' defined.
192. Representation of principal by sub-agent properly appointed.
Agent's responsibility for sub-agent.
Sub-agent's responsibility.
193. Agent's responsibility for sub-agent appointed without authority.
194. Relation between principal and person duly appointed by agent to act in business of agency.
195. Agent's duty in naming such person.

Ratification.

196. Right of person as to acts done for him without his authority.
Effect of ratification.
197. Ratification may be expressed or implied.
198. Knowledge requisite to valid ratification.
199. Effect of ratifying unauthorized act forming part of a transaction.
200. Ratification of unauthorized act cannot injure third person.

Revocation of Authority.

201. Termination of agency.
202. Termination of agency, where agent has an interest in subject-matter.
203. When principal may revoke agent's authority.
204. Revocation where authority has been partly exercised.
205. Compensation for revocation by principal, or renunciation by agent.
206. Notice of revocation or renunciation.
207. Revocation and renunciation may be expressed or implied.
208. When termination of agent's authority takes effect as to agent, and as to third persons.
209. Agent's duty on termination of agency by principal's death or insanity.
210. Termination of sub-agent's authority.

Agent's Duty to Principal.

211. Agent's duty in conducting principal's business.
212. Skill and diligence required from agent.

SECTIONS.

213. Agent's accounts.
214. Agent's duty to communicate with principal.
215. Right of principal when agent deals, on his own account, in business of agency without principal's consent.
216. Principal's right to benefit gained by agent dealing on his own account in business of agency.
217. Agent's right of retainer out of sums received on principal's account.
218. Agent's duty to pay sums received for principal.
219. When agent's remuneration becomes due.
220. Agent not entitled to remuneration for business misconducted.
221. Agent's lien on principal's property.

Principal's Duty to Agent.

222. Agent to be indemnified against consequences of lawful acts.
223. Agent to be indemnified against consequences of acts done in good faith.
224. Non-liability of employer of agent to do a criminal act.
225. Compensation to agent for injury caused by principal's neglect.

Effect of Agency on Contracts with third Persons.

226. Enforcement and consequences of agent's contracts.
227. Principal how far bound, when agent exceeds authority.
228. Principal not bound when excess of agent's authority is not separable.
229. Consequences of notice given to agent.
230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.
Presumption of contract to contrary.
231. Rights of parties to a contract made by agent not disclosed.
232. Performance of contract with agent supposed to be principal.
233. Right of person dealing with agent personally liable.
234. Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.
235. Liability of pretended agent.
236. Person falsely contracting as agent, not entitled to performance.
237. Liability of principal inducing belief that agent's unauthorized acts were authorized.
238. Effect, on agreement, of misrepresentation or fraud by agent.

CHAPTER XI.—OF PARTNERSHIP.

239. 'Partnership' defined.
'Firm' defined.
240. Lender not a partner by advancing money for share of profits.
241. Property left in business by retiring partner, or deceased partner's representative.
242. Servant or agent remunerated by share of profits, not a partner.
243. Widow or child of deceased partner receiving annuity out of profits, not a partner.

SECTIONS.

244. Person receiving portion of profits for sale of good-will, not a partner.
245. Responsibility of person leading another to believe him a partner.
246. Liability of person permitting himself to be represented as a partner.
247. Minor partner not personally liable, but his share is.
248. Liability of minor partner on attaining majority.
249. Partner's liability for debts of partnership.
250. Partner's liability to third person for neglect or fraud of co-partner.
251. Partner's power to bind co-partners.
252. Annulment of contract defining partners' rights and obligations.
253. Rules determining partners' mutual relations, where no contract to contrary.
254. When Court may dissolve partnership.
255. Dissolution of partnership by prohibition of business.
256. Rights and obligations of partners in partnership continued after expiry of term for which it was entered into.
257. General duties of partners.
258. Account to firm of benefit derived from transaction affecting partnership.
259. Obligations, to firm, of partner carrying on competing business.
260. Revocation of continuing guarantee by change in firm.
261. Non-liability of deceased partner's estate for subsequent obligations.
262. Payment of partnership-debts, and of separate debts.
263. Continuance of partners' rights and obligations after dissolution.
264. Notice of dissolution.
265. Right of partners to apply for winding-up by Court after termination of partnership.
266. Limited liability partnerships, incorporated partnerships, and joint stock companies.

SCHEDULE. Enactments repealed.

ACT No. IX OF 1872.

Received the Governor General's assent on the 25th April 1872.

The Indian Contract Act, 1872.

Preamble.

WHEREAS it is expedient to define and amend certain parts of the law relating to contracts;

It is hereby enacted as follows:—

PRELIMINARY.

Short title.

1. This Act may be called "The Indian Contract Act, 1872."

Extent. Commencement.

It extends to the whole of British India; and it shall come into force on the first day of September 1872.[a]

Enactments repealed.

The enactments mentioned in the schedule hereto are repealed to the extent specified in the third column thereof; but nothing herein contained

[a] That it is not retrospective, see 12 Beng. 472.

shall affect the provisions of any Statute, Act[a] or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :— Interpretation-clause.

(*a.*)—When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal : "Proposal."

(*b.*)—When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted,[b] becomes a promise ; "Promise."

(*c.*)—The person making the proposal is called the 'promisor', and the person accepting the proposal is called the 'promisee' : "Promisor" and "promisee."

(*d.*)—When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise : "Consideration."

(*e.*)—Every promise and every set of promises, forming the consideration for each other, is an agreement : "Agreement."

(*f.*)—Promises which form the consideration or part of the consideration for each other, are called reciprocal promises : "Reciprocal promises."

(*g.*)—An agreement not enforceable by law is said to be void : "Void agreement."

(*h.*)—An agreement enforceable by law is a contract : "Contract."

(*i.*)—An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract : "Voidable contract."

(*j.*)—A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. "Void contract."

CHAPTER I.—Of the Communication, Acceptance and Revocation of Proposals.

3. The communication of proposals, the acceptance of proposals and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it. Communication, acceptance and revocation of proposals.

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[a] See, for instance, Act No. XVIII of 1854, s. 12.
[b] But see sec. 4, ill. (*b*).

Communication when complete.

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made, when it comes to his knowledge.

Illustrations.

(*a.*) A proposes, by letter, to sell a house to B at a certain price.

The communication of the proposal is complete when B receives the letter.

(*b.*) B accepts A's proposal by a letter sent by post.

The communication of the acceptance is complete,

as against A when the letter is posted;

as against B, when the letter is received by A.

(*c.*) A revokes his proposal by telegram.

The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

Revocation of proposals and acceptances.

5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustration.

A proposes, by a letter sent by post, to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

Revocation how made.

6. A proposal is revoked—

(1) by the communication of notice of revocation by the proposer to the other party;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute.

7. In order to convert a proposal into a promise the acceptance must—

(1) be absolute and unqualified;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.

Acceptance by performing conditions, or receiving consideration.

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Promises, express and implied.

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II.—Of Contracts, Voidable Contracts, and Void Agreements.

What agreements are contracts.

10. All agreements are contracts[a] if they are made by the free consent of parties competent to contract, for a lawful consideration[b] and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing[c] or in the presence of witnesses, or any law relating to the registration of documents.

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[a] See sec. 2, clause (*h*). [b] See sec. 25, Expl. 2 and sec. 102.

[c] See sec. 25 *infra*, and Act No. VI of 1840, sec. 2 (acceptances of bills): Act No. XX of 1847, sec. 5 (assignment of copyright): Act No. XXXI of 1854, ss. 14, 18 (conveyances of interests in immoveable property, in cases to which English law is applicable): 17 & 18 Vic., c. 104, s. 55 (transfers of registered ships or shares therein): Act No. X of 1866, ss. 6, 16, 23, 42 (memorandum of association, articles of association, transfer of shares, contracts on behalf of company): Act No. XI of 1876, sec. 9 (contracts on behalf of Presidency Banks); and various local Acts, *e. g.*, the Oudh Rent Act No. XIX of 1868, ss 36, 48, 116: the Madras Rent Act VIII of 1865, sec. 7; and the Municipal Acts No. IV of 1873, s. 18 · No. XI of 1873, s. 18. No. XV of 1873, s. 13: No. VII of 1874, s. 31: Bengal Act No. IV of 1876, s. 54 · Madras Act No IX of 1867, s. 4; and Bombay Act No. III of 1872, s. 54.

Who are competent to contract.

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject,[a] and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

What is a sound mind for the purposes of contracting.

12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.[b]

Illustrations.

(*a*) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(*b*) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

"Consent" defined.

13. Two or more persons are said to consent when they agree upon the same thing in the same sense.

"Free consent" defined.

14. Consent is said to be free when it is not caused by—

(1) coercion, as defined in section fifteen, or

(2) undue influence, as defined in section sixteen, or

(3) fraud, as defined in section seventeen, or

(4) misrepresentation, as defined in section eighteen, or

(5) mistake, subject to the provisions of sections twenty, twenty-one and twenty-two.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

"Coercion" defined.

15. "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation.—It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.

Illustration.

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code.

A afterwards sues B for breach of contract at Calcutta.

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[a] See Act No. IX of 1875

[b] But see sec. 68 *infra*.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code was not in force at the time when or place where the act was done.

16. "Undue influence" is said to be employed in the following cases :— "Undue influence" defined.

(1).—When a person in whom confidence is reposed by another, or who holds a real or apparent authority over that other, makes use of such confidence or authority for the purpose of obtaining an advantage over that other, which, but for such confidence or authority, he could not have obtained :

(2).—When a person, whose mind is enfeebled by old age, illness, or mental or bodily distress, is so treated as to make him consent to that, to which, but for such treatment, he would not have consented, although such treatment may not amount to coercion.

17. "Fraud" means and includes any of the following acts committed by a party to a contract,[a] or with his connivance, or by his agent,[b] with intent to deceive another party thereto or his agent, or to induce him to enter into the contract[a] :— "Fraud" defined.

(1.)—The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2.)—The active concealment of a fact by one having knowledge or belief of the fact;

(3.)—A promise made without any intention of performing it;

(4.)—Any other act fitted to deceive;

(5.)—Any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract[a] is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak,[c] or unless his silence is, in itself, equivalent to speech.

Illustrations.

(*a.*) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(*b.*) B is A's daughter, and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(*c.*) B says to A—"If you do not deny it, I shall assume that the horse is sound;" A says nothing. Here, A's silence is equivalent to speech.

(*d.*) A and B, being traders, enter upon a contract.[a] A has private information of a change in prices which would affect B's willingness to proceed with the contract.[a] A is not bound to inform B.

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[a] *Read* 'agreement.' [b] Compare sec. 238 *infra*. [c] See sec. 143 *infra*.

"Misrepresentation" defined.

18. "Misrepresentation" means and includes—

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

Voidability of agreements without free consent.

19. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section seventeen, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations.

(*a.*) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(*b.*) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(*c.*) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage-debt redeemed.[a]

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[a] *Read* 'paid off' or 'discharged.'

(*d.*) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.

(*e.*) A is entitled to succeed to an estate at the death of B; B dies: C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

20. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Agreement void where both parties are under mistake as to matter of fact.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be deemed a mistake as to a matter of fact.

Illustrations.

(*a.*) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of these facts. The agreement is void.

(*b.*) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(*c.*) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

21. A contract is not voidable because it was caused by a mistake as to any law in force in British India; but a mistake as to a law not in force in British India has the same effect as a mistake of fact.

Effect of mistakes as to law.

Illustrations.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation: the contract is not voidable.

A and B make a contract grounded on an erroneous belief as to the law regulating bills of exchange in France: the contract is voidable.

22. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

Contract caused by mistake of one party as to matter of fact.

23. The consideration or object of an agreement is lawful, unless—

it is forbidden by law;[a] or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

What considerations and objects are lawful, and what not.

[a] See *infra* secs. 26, 27, 28, 30.

is fraudulent ; or

involves or implies injury to the person or property of another ; or

the Court regards it as immoral,[a] or opposed to public policy.[b]

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful, is void.

Illustrations.

(*a.*) A agrees to sell his house to B for 10,000 rupees. Here, B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(*b.*) A promises to pay B 1,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here, the promise of each party is the consideration for the promise of the other party, and they are lawful considerations.

(*c.*) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here, A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise, and these are lawful considerations.

(*d.*) A promises to maintain B's child, and B promises to pay A 1,000 rupees yearly for the purpose. Here, the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(*e.*) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(*f.*) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(*g.*) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment, by A, on his principal.

(*h.*) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(*i*) A's estate is sold for arrears of revenue under the provisions of an Act of the legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement

[a] See 9 Beng. Appendix 37.

[b] See 4 Beng. O. C. J. : 9 Beng. Appendix 38 : 11 Beng. 129.

is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(*j.*) A, who is B's mukhtár, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(*k.*) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code.

Void Agreements.

24. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Agreements void, if considerations and objects unlawful in part.

Illustration.

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful.

25. An agreement made without consideration is void, unless —

Agreement without consideration, void, unless —

(1) it is expressed in writing and registered under the law for the time being in force for the registration of assurances, and is made on account of natural love and affection between parties standing in a near relation to each other ; or unless

it is in writing and registered,

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do ; or unless

or is a promise to compensate for something done,

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

or is a promise to pay a debt barred by limitation law.

In any of these cases, such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate ; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations.

(*a.*) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.

(*b.*) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.

(*c.*) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(*d.*) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(*e.*) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(*f.*) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(*g.*) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

Agreement in restraint of marriage, void.

26. Every agreement in restraint of the marriage of any person, other than a minor,[a] is void.

Agreement in restraint of trade, void.

27. Every agreement by which any one is restrained from exercising[b] a lawful profession, trade or business of any kind, is to that extent void.

Saving of agreement not to carry on business of which good-will is sold;

Exception 1.—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

of agreement between partners prior to dissolution;

Exception 2.—Partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business similar to that of the partnership within such local limits as are referred to in the last preceding exception.

or during continuance of partnership.

Exception 3.—Partners may agree that some one or all of them will not carry on any business, other than that of the partnership, during the continuance of the partnership.

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a during his or her minority, as to which see Act No. IX of 1875.

b These words "do not mean an absolute restriction, and are intended to apply to a partial restriction, a restriction limited to some particular place," per Couch C. J., 14 Beng. 85.

28. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Agreements in restraint of legal proceedings, void.

Exception 1.—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.[a]

Saving of contract to refer to arbitration dispute that may arise.

When such a contract has been made, a suit may be brought for its specific performance; and if a suit, other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party, in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit.

Suits barred by such contracts.

Exception 2.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

Saving of contract to refer questions that have already arisen.

29. Agreements, the meaning of which is not certain, or capable of being made certain, are void.

Agreements void for uncertainty.

Illustrations.

(*a.*) A agrees to sell to B 'a hundred tons of oil.' There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(*b.*) A agrees to sell to B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.

(*c.*) A, who is a dealer in cocoanut-oil only, agrees to sell to B 'one hundred tons of oil.' The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.

(*d.*) A agrees to sell to B 'all the grain in my granary at Rámnagar.' There is no uncertainty here to make the agreement void.

(*e.*) A agrees to sell to B 'one thousand maunds of rice at a price to be fixed by C.' As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(*f.*) A agrees to sell to B 'my white horse for rupees five hundred or rupees one thousand.' There is nothing to show which of the two prices was to be given. The agreement is void.

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[a] *Koegler* v. *Coringa Oil Company*, I. L. R., 1 Calc. 42.

Agreements by way of wager, void.

30. Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Exception in favour of certain prizes for horse-racing.

This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.[a]

Section 294A of the Indian Penal Code not affected.

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code apply.

CHAPTER III.—Of Contingent Contracts.

"Contingent contract" defined.

31. A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Illustration.

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

Enforcement of contracts contingent on an event happening.

32. Contingent contracts to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contracts become void.

Illustrations.

(*a.*) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.

(*b.*) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(*c.*) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

Enforcement of contracts contingent on an event not happening.

33. Contingent contracts to do or not to do anything if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible, and not before.

Illustration.

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

[a] 6 & 9 Vic., c. 109, s. 18.

34. If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.

Illustration.

A agrees to pay B a sum of money if B marries C.

C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die, and that C may afterwards marry B.

35. Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time, become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts become void, which are contingent on happening of specified event within fixed time.

Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

When contracts may be enforced, which are contingent on specified event not happening within fixed time.

Illustrations.

(*a.*) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year; and becomes void if the ship is burnt within the year.

(*b.*) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

36. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Agreements contingent on impossible events, void.

Illustrations.

(*a.*) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(*b.*) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

CHAPTER IV.—Of the Performance of Contracts.

Contracts which must be performed.

37. The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Obligation of parties to contracts.

Promises bind the representatives of the promisors in case of the death of such promisors before performance,[a] unless a contrary intention appears from the contract.

Illustrations.

(*a.*) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(*b.*) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

Effect of refusal to accept offer of performance.

38. Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions :—

(1.) It must be unconditional:

(2.) It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do:

(3.) If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustration.

A contracts to deliver to B at his warehouse, on the 1st March 1873, 100 bales of cotton of a particular quality. In order to make an offer of performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

Effect of refusal of party to perform promise wholly.

39. When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract,[b] unless he has signified, by words or conduct, his acquiescence in its continuance.

Illustrations.

(*a.*) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B

[a] This probably means "to the extent of the assets received by them as such and not duly applied," see *Madho Dass* v. *Radha Mal*, 9 Panjáb Record, 213.

[b] And see sec. 75 *infra*.

engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(*b.*) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night, A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

By whom Contracts must be performed.

Person by whom promise is to be performed.

40. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Illustrations.

(*a.*) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B, or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(*b.*) A promises to paint a picture for B. A must perform this promise personally.

Effect of accepting performance from third person.

41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Devolution of joint liabilities.

42. When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

Any one of joint promisors may be compelled to perform.

43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one of such[a] joint promisors to perform the whole of the promise.

Each promisor may compel contribution.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

[a] The meaning probably is 'any one *or more* of such.'

Sharing of loss by default in contribution.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Explanation.—Nothing in this section shall prevent a surety from recovering, from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations.

(*a.*) A, B and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(*b.*) A, B and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

(*c.*) A, B and C are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(*d.*) A, B and C are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

Effect of release of one joint promisor.

44. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.[a]

Devolution of joint rights.

45. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

Illustration.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and, after the death of C, with the representatives of B and C jointly.

Time and Place for Performance.

Time for performance of promise, where no application is to be made and no time is specified.

46. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

[a] See sec. 138 *infra*.

Explanation.—The question 'what is a reasonable time' is, in each particular case, a question of fact.

47. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Time and place for performance of promise on certain day, and no application to be made.

Illustration.

A promises to deliver goods at B's warehouse on the 1st January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

48. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Application for performance on certain day to be at proper time and place.

Explanation.—The question 'what is a proper time and place' is, in each particular case, a question of fact.

49. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Place for performance of promise, where no application to be made and no place fixed for performance.

Illustration.

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

50. The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

Performance in manner or at time prescribed or sanctioned by promisee.

Illustrations.

(*a.*) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(*b.*) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(*c.*) A owes B 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part payment.

(*d.*) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

Performance of Reciprocal Promises.

Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations.

(*a.*) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(*b.*) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

Order of performance of reciprocal promises.

52. Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Illustrations.

(*a.*) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(*b.*) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

Liability of party preventing event on which contract is to take effect.

53. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation[a] from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Illustration.

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents

[a] See sec. 73 *infra.*

him from doing so. The contract is voidable at the option of B ; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises.

54. When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Illustrations.

(*a.*) A hires B's ship to take in and convey, from Calcutta to the Mauritius, a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(*b.*) A contracts with B to execute certain builders' work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(*c.*) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(*d.*) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

Effect of failure to perform at fixed time, on contract in which time is essential.

55. When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time ; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon.

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.[a]

Agreement to do impossible act.

56. An agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful.

A contract to do an act which, after the contract is made, becomes impossible,[b] or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.[c]

Compensation for loss through non-performance of act known to be impossible or unlawful.

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Illustrations.

(*a.*) A agrees with B to discover treasure by magic. The agreement is void.

(*b.*) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

(*c.*) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy, A must make compensation to B for the loss caused to her by the non-performance of his promise.

(*d.*) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(*e.*) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

Reciprocal promises to do things legal, and also other things illegal.

57. Where persons reciprocally promise, firstly to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

Illustration.

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

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[a] Compare ss. 62 and 63 *infra.*

[b] otherwise than by the default of the contractor.

[c] But see sec. 65 *infra.*

The first set of reciprocal promises, namely, to sell the house and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

58. In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced:

Alternative promise, one branch being illegal.

Illustration.

A and B agree that A shall pay B 1,000 rupees, for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

Appropriation of Payments.

59. Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Application of payment where debt to be discharged is indicated.

Illustrations.

(*a.*) A owes B, among other debts, 1,000 rupees upon a promissory note, which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(*b.*) A owes to B, among other debts, the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

60. Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Application of payment where debt to be discharged is not indicated.

61. Where neither party makes any appropriation, the payment shall be applied in discharge of the debts[a] in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

Application of payment where neither party appropriates.

Contracts which need not be performed.

62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Effect of novation, rescission and alteration of contract.

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[a] Probably the lawful debts referred to in s. 60.

Illustrations.

(*a.*) A owes money to B under a contract. It is agreed between A, B and C, that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(*b.*) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract, and extinguishes the old.

(*c.*) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

Promisee may dispense with or remit performance of promise.

63. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance,[a] or may accept instead of it any satisfaction which he thinks fit.

Illustrations.

(*a.*) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(*b.*) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(*c.*) A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.[b]

(*d*) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts, the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(*e.*) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a compensation[c] of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

Consequences of rescission of voidable contract.

64. When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.[d]

Obligation of person who

65. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agree-

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[a] But see s. 135. *infra.* [b] See sec. 41 *supra.* [c] *Sic.* Read 'composition.' [d] See sec. 75 *infra.*

ment or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

advantage under void agreement, or contract that becomes void.

Illustrations.

(*a.*) A pays B 1,000 rupees, in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(*b.*) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the first of May. He is bound to pay A for them.

(*c.*) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(*d.*) A contracts to sing for B at a concert for 1,000 rupees, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid in advance.

66. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.[a]

Mode of communicating or revoking rescission of voidable contract.

67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Effect of neglect of promisee to afford promisor reasonable facilities for performance.

Illustration.

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract, if it is caused by such neglect or refusal.

CHAPTER V.—Of certain Relations resembling those created by Contract.

68. If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Claim for necessaries supplied to person incapable of contracting, or on his account.

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[a] See secs. 3 and 5 *supra*.

Illustrations.

(*a.*) A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

(*b.*) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

Reimbursement of person paying money due by another, in payment of which he is interested.

69. A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration.

B holds land in Bengal, on a lease granted by A, the zamíndár. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

Obligation of person enjoying benefit of nongratuitous act.

70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Illustrations.

(*a.*) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(*b.*) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

Responsibility of finder of goods.

71. A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.[a]

Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.

72. A person to whom money has been paid, or any thing delivered, by mistake or under coercion,[b] must repay or return it.

Illustrations.

(*a.*) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(*b.*) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

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[a] See secs. 151 and 152 *infra*.

[b] See sec. 15, *supra*.

CHAPTER VI.—Of the Consequences of Breach of Contract.

73. When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Compensation for loss or damage caused by breach of contract.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Compensation for failure to discharge obligation resembling those created by contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Illustrations.

(*a.*) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(*b.*) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo, which A is to provide, and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(*c.*) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(*d.*) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

(*e.*) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some

avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(*f.*) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(*g.*) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freights rise, and, on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(*h.*) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(*i.*) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(*j.*) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(*k.*) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is com-

pelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(*l.*) A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down and has to be rebuilt by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

(*m.*) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(*n.*) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(*o.*) A contracts to deliver 50 maunds of saltpetre to B on the first of January at a certain price. B, afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(*p.*) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(*q.*) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(*r.*) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-

half of his passage-money. The ship does not sail on the first of January, and B, after being, in consequence, detained in Calcutta for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

Title to compensation for breach of contract in which a sum is named as payable in case of breach.

74. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named.

EXCEPTION.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Government of India or of any Local Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Illustrations.

(*a.*) A contracts with B to pay B Rs. 1,000, if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1,000, as the Court considers reasonable.

(*b.*) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B Rs. 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation, not exceeding Rs. 5,000, as the Court considers reasonable.

(*c.*) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

Party rightfully rescinding contract, entitled to compensation.

75. A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

Illustration.

A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents

herself from the theatre, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

CHAPTER VII.—SALE OF GOODS.

When Property in Goods sold passes.

'Goods' defined.

76. In this chapter, the word 'goods' means and includes every kind of moveable property.[a]

'Sale' defined.

77. 'Sale' is the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer.

Sale how effected.

78. Sale is effected by offer and acceptance of ascertained goods for a price,

or of a price for ascertained goods,

together with payment of the price or delivery of the goods; or with tender, part-payment, earnest or part-delivery; or with an agreement, express or implied, that the payment or delivery, or both, shall be postponed.

Where there is a contract for the sale of ascertained goods, the property in the goods sold passes to the buyer when the whole or part of the price, or when the earnest, is paid, or when the whole or part of the goods is delivered.[b]

If the parties agree, expressly or by implication, that the payment or delivery, or both, shall be postponed, the property passes as soon as the proposal for sale is accepted.

Illustrations.

(*a.*) B offers to buy A's horse for 500 rupees. A accepts B's offer, and delivers the horse to B. The horse becomes B's property on delivery.

(*b.*) A sends goods to B, with the request that he will buy them at a stated price if he approves of them, or return them if he does not approve of them. B retains the goods, and informs A that he approves of them. The goods become B's when B retains them.

(*c.*) B offers A, for his horse, 1,000 rupees, the horse to be delivered to B on a stated day, and the price to be paid on another stated day. A accepts the offer. The horse becomes B's as soon as the proposal is accepted.

(*d.*) B offers A, for his horse, 1,000 rupees, on a month's credit. A accepts the offer. The horse becomes B's as soon as the offer is accepted.

(*e.*) B, on the first January, offers to A, for a quantity of rice, 2,000 rupees, to be paid on the first March following, the rice not to be taken away till paid for. A accepts the offer. The rice becomes B's as soon as the offer is accepted.

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[a] 'Goods' would thus include money and negotiable instruments. Act No. I of 1868, s. 2, cl. (6) This cannot have been intended.

[b] *i. e.*, when the whole is delivered or when part is delivered in progress of delivery of the whole. See sec. 92 *infra*.

Transfer of ownership of thing sold, which has yet to be ascertained, made or finished.

79. Where there is a contract for the sale of a thing which has yet to be ascertained, made or finished,[a] the ownership of the thing is not transferred to the buyer until it is ascertained, made or finished.

Illustration.

B orders A, a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building, B pays to A money from time to time on account of the price. The ownership of the barge does not pass to B until it is finished.

Completion of sale of goods which the seller is to put into state in which buyer is to take them.

80. Where, by a contract for the sale of goods, the seller is to do anything to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

Illustration.

A, a ship-builder, contracts to sell to B, for a stated price, a vessel which is lying in A's yard; the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery. Under the contract, the property in the vessel does not pass to B until the vessel has been rigged, fitted up, and delivered.

Completion of sale of goods, when seller has to do anything thereto in order to ascertain price.

81. Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

Illustrations.

(*a.*) A, the owner of a stack of bark, contracts to sell it to B, weigh and deliver it, at 100 rupees per ton. B agrees to take and pay for it on a certain day. Part is weighed and delivered to B; the ownership of the residue is not transferred to B until it has been weighed pursuant to the contract.

(*b.*) A contracts to sell a heap of clay to B at a certain price per ton. B is, by the contract, to load the clay in his own carts, and to weigh each load at a certain weighing machine, which his carts must pass on their way from A's grounds to B's place of deposit. Here, nothing more remains to be done by the seller; the sale is complete, and the ownership of the heap of clay is transferred at once.

Completion of sale, when goods are unascertained at date of contract.

82. Where the goods are not ascertained at the time of making the contract of sale, it is necessary to the completion of the sale that the goods shall be ascertained.[b]

Illustration.

A agrees to sell to B, 20 tons of oil in A's cisterns. A's cisterns contain more than 20 tons of oil. No portion of the oil has become the property of B.

Ascertainment of goods by subsequent appropriation.

83. Where the goods are not ascertained at the time of making the agreement for sale, but goods answering the description in the agreement are subsequently appropriated by one party, for the purpose of the agreement,

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[a] See sec. 80. [b] See sec. 79.

and that appropriation is assented to by the other, the goods have been ascertained, and the sale is complete.

Illustration.

A, having a quantity of sugar in bulk, more than sufficient to fill 20 hogsheads, contracts to sell B 20 hogsheads of it. After the contract, A fills 20 hogsheads with the sugar, and gives notice to B that the hogsheads are ready, and requires him to take them away. B says he will take them as soon as he can. By this appropriation by A, and assent by B, the sugar becomes the property of B.

Ascertainment of goods by seller's selection.

84. Where the goods are not ascertained at the time of making the contract of sale, and, by the terms of the contract, the seller is to do an act with reference to the goods which cannot be done until they are appropriated to the buyer, the seller has a right to select any goods answering to the contract, and by his doing so, the goods are ascertained.

Illustration.

B agrees with A to purchase of him, at a stated price, to be paid on a fixed day, 50 maunds of rice out of a larger quantity in A's granary. It is agreed that B shall send sacks for the rice, and that A shall put the rice into them. B does so, and A puts 50 maunds of rice into the sacks. The goods have been ascertained.

Transfer of ownership of moveable property, when sold together with immoveable.

85. Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transfer of the immoveable property.

Illustration.

A agrees with B for the sale of a house and furniture. The ownership of the furniture does not pass to B until the house is conveyed to B.

Buyer to bear loss after goods have become his property.

86. When goods have become the property of the buyer, he must bear any loss arising from their destruction or injury.

Illustrations.

(*a*.) B offers, and A accepts, 100 rupees for a stack of fire-wood standing on A's premises, the fire-wood to be allowed to remain on A's premises till a certain day, and not to be taken away till paid for. Before payment, and while the fire-wood is on A's premises, it is accidentally destroyed by fire. B must bear the loss.

(*b*) A bids 1,000 rupees for a picture at a sale by auction. After the bid, it is injured by an accident. If the accident happens before the hammer falls, the loss falls on the seller; if afterwards, on A.

Transfer of ownership of goods agreed to be sold while non-existent.

87. When there is a contract for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts done, after the goods are produced in pursuance of the contract, by the seller, or by the buyer with the seller's assent.

Illustrations.

(*a.*) A contracts to sell to B, for a stated price, all the indigo which shall be produced at A's factory during the ensuing year. A, when the indigo has been manufactured, gives B an acknowledgment that he holds the indigo at his disposal. The ownership of the indigo vests in B from the date of the acknowledgment.

(*b.*) A, for a stated price, contracts that B may take and sell any crops that shall be grown on A's land in succession to the crops then standing. Under this contract, B, with the assent of A, takes possession of some crops grown in succession to the crops standing at the time of the contract. The ownership of the crops, when taken posession of, vests in B.

(*c.*) A, for a stated price, contracts that B may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this contract, B applies to A for possession of some crops grown in succession to the crops which were standing at the time of the contract. A refuses to give possession. The ownership of the crops has not passed to B, though A may commit a breach of contract in refusing to give possession.

Contract to sell and deliver, at a future day, goods not in seller's possession at date of contract.

88. A contract for the sale of goods to be delivered at a future day is binding, though the goods are not in the possession of the seller at the time of making the contract, and though, at that time, he has no reasonable expectation of acquiring them otherwise than by purchase.

Illustration.

A contracts, on the first January, to sell B 50 shares in the East Indian Railway Company, to be delivered and paid for on the first March of the same year. A, at the time of making the contract, is not in possession of any shares. The contract is valid.

Determination of price not fixed by contract.

89. Where the price of goods sold is not fixed by the contract of sale, the buyer is bound to pay the seller such a price as the Court considers reasonable.

Illustration.

B, living at Patna, orders of A, a coach-builder at Calcutta, a carriage of a particular description. Nothing is said by either as to the price. The order having been executed, and the price being in dispute between the buyer and the seller, the Court must decide what price it considers reasonable.

Delivery.

Delivery how made.

90. Delivery of goods sold may be made by doing anything which has the effect of putting them in the possession of the buyer, or of any person authorized to hold them on his behalf.

Illustrations.

(*a.*) A sells to B a horse, and causes or permits it to be removed from A's stables to B's. The removal to B's stable is a delivery.

(*b.*) B, in England, orders 100 bales of cotton from A, a merchant of Bombay, and sends his own ship to Bombay for the cotton. The putting the cotton on board the ship is a delivery to B.

(*c.*) A sells to B certain specific goods which are locked up in a godown. A gives B the key of the godown, in order that he may get the goods. This is a delivery.

(*d.*) A sells to B five specific casks of oil. The oil is in the warehouse of A. B sells the five casks to C. A receives warehouse rent for them from C. This amounts to a delivery of the oil to C, as it shows an assent on the part of A to hold the goods as warehouseman of C.

(*e.*) A sells to B 50 maunds of rice in the possession of C, a warehouseman. A gives B an order to C to transfer the rice to B, and C assents to such order, and transfers the rice in his books to B. This is a delivery.

(*f.*) A agrees to sell B five tons of oil, at 1,000 rupees per ton, to be paid for at the time of delivery. A gives to C, a wharfinger, at whose wharf he had twenty tons of the oil, an order to transfer five of them into the name of B. C makes the transfer in his books, and gives A's clerk a notice of the transfer for B. A's clerk takes the transfer notice to B, and offers to give it him on payment of the price of the oil. B refuses to pay. There has been no delivery to B, as B never assented to make C his agent to hold for him the five tons selected by A.

Effect of delivery to wharfinger or carrier.

91. A delivery to a wharfinger or carrier of the goods sold, has the same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him, unless the delivery is so made as to enable him to hold the wharfinger or carrier responsible for the safe custody or delivery of the goods.

Illustration.

B, at Agra, orders of A, who lives at Calcutta, three casks of oil to be sent to him by railway. A takes three casks of oil directed to B to the railway station, and leaves them there without conforming to the rules which must be complied with in order to render the Railway Company responsible for their safety. The goods do not reach B. There has not been a sufficient delivery to charge B in a suit for the price.

Effect of part-delivery.

92. A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

97. Where, by the contract, the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day, and does not then pay for them, the seller may retain the goods for the price.

Seller's lien where payment to be made at future day, and buyer allows goods to remain in seller's possession.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse till the expiry of the three months, and then does not pay for them. A may retain the goods for the price.

98. A seller, in possession of goods sold, may retain them for the price against any subsequent buyer, unless the seller has recognized the title of the subsequent buyer.

Seller's lien against subsequent buyer.

Stoppage in Transit..

99. A seller who has parted with the possession of the goods, and has not received the whole price, may, if the buyer becomes insolvent, stop the goods while they are in transit to the buyer.

Power of seller to stop in transit.

100. Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.

When goods are to be deemed in transit.

Illustrations.

(*a.*) B, living at Madras, orders goods of A, at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there delivered to C, a wharfinger, to be forwarded to Madras. The goods, while they are in the possession of C, are in transit.

(*b.*) B, at Delhi, orders goods of A, at Calcutta. A consigns and forwards the goods to B at Delhi. On arrival there, they are taken to the warehouse of B, and left there. B refuses to receive them, and immediately afterwards stops payment. The goods are in transit.

(*c.*) B, who lives at Puná, orders goods of A at Bombay. A sends them to Puná by C, a carrier appointed by B. The goods arrive at Puná, and are placed by C, at B's request, in C's warehouse for B. The goods are no longer in transit.

(*d.*) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. The transit is at an end when the cotton is delivered on board the ship.

(*e.*) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. A delivers the cotton on board the ship, and takes bills of lading from the master, making the cotton

deliverable to A's order or assigns. The cotton arrives at London, but, before coming into B's possession, B becomes insolvent. The cotton has not been paid for. A may stop the cotton.

Continuance of right of stoppage.

101. The seller's right of stoppage does not, except in the cases hereinafter mentioned, cease on the buyer's reselling the goods while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf.

Cessation of right on assignment, by buyer, of bill of lading.

102. The right of stoppage ceases if the buyer, having obtained a bill of lading or other document showing title to the goods,[a] assigns it, while the goods are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them.

Illustrations.

(*a.*) A sells and consigns certain goods to B, and sends him the bill of lading. A being still unpaid, B becomes insolvent, and while the goods are in transit, assigns the bill of lading for cash to C, who is not aware of his insolvency. A cannot stop the goods in transit.

(*b.*) A sells and consigns certain goods to B. A being still unpaid, B becomes insolvent, and, while the goods are still in transit, assigns the bill of lading for cash to C, who knows that B is insolvent. The assignment not being in good faith, A may still stop the goods in transit.

Stoppage where bill of lading is pledged to secure specific advance.

103. Where a bill of lading or other instrument of title to any goods is assigned by the buyer of such goods by way of pledge, to secure an advance made specifically upon it, in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit.

Illustrations.

(*a.*) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C, to secure a specific advance of 5,000 rupees made to him upon the bill of lading by C. B becomes insolvent, being indebted to C to the amount of 9,000 rupees. A is not entitled to stop the goods except on payment or tender to C of 5,000 rupees.

(*b.*) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C, to secure the sum of 5,000 rupees due from him to C, upon a general balance of account. B becomes insolvent. A is entitled to stop the goods in transit without payment or tender to C of the 5,000 rupees.

Stoppage how effected.

104. The seller may effect stoppage in transit, either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depositary in whose possession they are.

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[a] See sec. 108, Exception 1, *infra.*

105. Such notice may be given, either to the person who has the immediate possession of the goods, or to the principal whose servant has possession. In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer. Notice of seller's claim.

106. Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid. Right of seller on stoppage.

Illustration.

A sells to B 100 bales of cotton; 60 bales having come into B's possession, and 40 being still in transit, B becomes insolvent, and A, being still unpaid, stops the 40 bales in transit. A is entitled to hold the 40 bales until the price of the 100 bales is paid.

Resale.

107. Where the buyer of goods fails to perform his part of the contract, either by not taking the goods sold to him, or by not paying for them, the seller, having a lien on the goods, or having stopped them in transit, may, after giving notice to the buyer of his intention to do so, resell them, after the lapse of a reasonable time, and the buyer must bear any loss, but is not entitled to any profit, which may occur on such resale. Resale on buyer's failure to perform.

Title.

108. No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases:— Title conveyed by seller of goods to buyer.

EXCEPTION 1.—When any person is, by the consent of the owner, in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or other document showing title to goods, he may transfer the ownership of the goods of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary[a]: Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.

EXCEPTION 2.—If one of several joint-owners of goods has the sole possession of them by the permission of the co-owners, the ownership of the

[a] It has been held that this exception does not apply 'where there is only a qualified possession, such as a hirer of goods has, or where the possession is for a specific purpose,' *Greenwood* v. *Holquette*, 12 Beng. 46.

goods is transferred to any person who buys them of such joint-owner in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has no right to sell them.

EXCEPTION 3.—When a person has obtained possession of goods under a contract voidable at the option of the other party thereto, the ownership of the goods is transferred to a third person who, before the contract is rescinded, buys them in good faith of the person in possession; unless the circumstances which render the contract voidable amounted to an offence committed by the person in possession or those whom he represents.

In this case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract.

Illustrations.

(*a.*) A buys from B, in good faith, a cow which B had stolen from C. The property in the cow is not transferred to A.

(*b.*) A, a merchant, entrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not to sell the goods for less than a certain price, and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit. The property in the goods passes to D.

(*c.*) A sells to B goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C, and it has not been endorsed by C. The property is not transferred to B.

(*d.*) A, B and C are joint Hindú brothers, who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases *bonâ fide.* The property in the cow is transferred to D.

(*e.*) A, by a misrepresentation not amounting to cheating, induces B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract. The property in the horse is transferred to C; and B is entitled to compensation from A for any loss which B has sustained by being prevented from rescinding the contract.

(*f.*) A compels B by wrongful intimidation, or induces him by cheating or forgery, to sell him a horse, and, before B rescinds the contract, sells the horse to C. The property is not transferred to C.

Warranty.

Seller's responsibility for badness of title

109. If the buyer, or any person claiming under him, is, by reason of the invalidity of the seller's title, deprived of the thing sold, the seller is responsible to the buyer, or the person claiming under him, for loss caused thereby, unless a contrary intention appears by the contract.

110. An implied warranty of goodness or quality may be established by the custom of any particular trade.

Establishment of implied warranty of goodness or quality.

111. On the sale of provisions, there is an implied warranty that they are sound.

Warranty of soundness implied on sale of provisions.

112. On the sale of goods by sample, there is an implied warranty that the bulk is equal in quality to the sample.[a]

Warranty of bulk implied on sale by sample.

113. Where goods are sold as being of a certain denomination, there is an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have bought them by sample, or after inspection of the bulk.

Warranty implied where goods are sold as being of a certain denomination.

Explanation.—But if the contract specifically states that the goods, though sold as of a certain denomination, are not warranted to be of that denomination, there is no implied warranty.

Illustrations.

(*a.*) A, at Calcutta, sells to B twelve bags of "waste silk," then on its way from Murshedábád to Calcutta. There is an implied warranty by A that the silk shall be such as is known in the market under the denomination of "waste silk."

(*b.*) A buys, by sample and after having inspected the bulk, 100 bales of "Fair Bengal" cotton. The cotton proves not to be such as is known in the market as "Fair Bengal": there is a breach of warranty.

114. Where goods have been ordered for a specified purpose, for which goods of the denomination mentioned in the order are usually sold, there is an implied warranty by the seller that the goods supplied are fit for that purpose.[b]

Warranty where goods ordered for a specified purpose.

Illustration.

B orders of A, a copper manufacturer, copper for sheathing a vessel. A, on this order, supplies copper. There is an implied warranty that the copper is fit for sheathing a vessel.

115. Upon the sale of an article of a well-known ascertained kind, there is no implied warranty of its fitness for any particular purpose.

Warranty on sale of article of well-known ascertained kind.

Illustration.

B writes to A, the owner of a patent invention for cleaning cotton—"Send me your patent cotton-cleaning machine to clean the cotton at my factory." A sends the machine according to order. There is an implied warranty by A that it is the article known as A's patent cotton-cleaning machine, but none that it is fit for the particular purpose of cleaning the cotton at B's factory.

[a, b] See sec. 118 *infra*.

Seller when not responsible for latent defects.

116. In the absence of fraud and of any express warranty of quality, the seller of an article which answers the description under which it was sold is not responsible for a latent defect in it.

Illustration.

A sells to B a horse. It turns out that the horse had, at the time of the sale, a defect of which A was unaware. A is not responsible for this.

Buyer's right on breach of warranty.

117. Where a specific article, sold with a warranty, has been delivered and accepted, and the warranty is broken, the sale is not thereby rendered voidable; but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty.

Illustration.

A sells and delivers to B a horse warranted sound. The horse proves to have been unsound at the time of sale. The sale is not thereby rendered voidable, but B is entitled to compensation from A for loss caused by the unsoundness.

Right of buyer on breach of warranty in respect of goods not ascertained.

118. Where there has been a contract, with a warranty, for the sale of goods which, at the time of the contract, were not ascertained or not in existence, and the warranty is broken, the buyer may

accept the goods or refuse to accept the goods when tendered,

or keep the goods for a time reasonably sufficient for examining and trying them, and then refuse to accept them; provided that, during such time, he exercises no other act of ownership over them than is necessary for the purpose of examination and trial.

In any case the buyer is entitled to compensation from the seller for any loss caused by the breach of warranty; but if he accepts the goods and intends to claim compensation, he must give notice of his intention to do so within a reasonable time after discovering the breach of the warranty.

Illustrations.

(*a.*) A agrees to sell and, without application on B's part, deliver to B 200 bales of unascertained cotton by sample. Cotton not in accordance with sample is delivered to B. B may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(*b.*) B agrees to buy of A twenty-five sacks of flour by sample. The flour is delivered to B, who pays the price. B, upon examination, finds it not equal to sample; B afterwards uses two sacks, and sells one. He cannot now rescind the contract and recover the price, but he is entitled to compensation from A for any loss caused by the breach of warranty.

(*c.*) B makes two pairs of shoes for A by A's order. When the shoes are delivered, they do not fit A. A keeps both pairs for a day. He wears one pair for a short time in the house, and takes a long walk out of doors in the other pair.

He may refuse to accept the first pair, but not the second. But he may recover compensation for any loss sustained by the defect of the second pair.

Miscellaneous.

119. When the seller sends to the buyer goods not ordered with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered.

When buyer may refuse to accept, if goods not ordered are sent with goods ordered.

Illustration.

A orders of B specific articles of china. B sends these articles to A in a hamper, with other articles of china which had not been ordered. A may refuse to accept any of the goods sent.

120. If a buyer wrongfully refuses to accept the goods sold to him, this amounts to a breach of the contract of sale.

Effect of wrongful refusal to accept.

121. When goods sold have been delivered to the buyer, the seller is not entitled to rescind the contract on the buyer's failing to pay the price at the time fixed, unless it was stipulated by the contract that he should be so entitled.

Right of seller as to rescission, on failure of buyer to pay price at time fixed.

122. Where goods are sold by auction, there is a distinct and separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down.

Sale and transfer of lots sold by auction.

123. If, at a sale by auction, the seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer.

Effect of use, by seller, of pretended biddings to raise price.

CHAPTER VIII.—OF INDEMNITY AND GUARANTEE.

124. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a 'contract of indemnity.'

'Contract of indemnity' defined.

Illustration.

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

125. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

Rights of indemnity-holder when sued.

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any

contract of indemnity, or if the promisor authorized him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

'Contract of guarantee,' 'surety,' 'principal debtor,' and 'creditor.'

126. A 'contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called the 'principal debtor,' and the person to whom the guarantee is given is called the 'creditor.' A guarantee may be either oral or written.

Consideration for guarantee.

127. Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

Illustrations.

(*a.*) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(*b*) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that, if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(*c.*) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

Surety's liability.

128. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable, not only for the amount of the bill, but also for any interest and charges which may have become due on it.

'Continuing guarantee.'

129. A guarantee which extends to a series of transactions, is called a 'continuing guarantee.'

Illustrations.

(*a.*) A, in consideration that B will employ C in collecting the rents of B's zamíndári, promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(*b.*) A guarantees payment to B, a tea-dealer, to the amount of £100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of £100, and C pays B for it. Afterwards, B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(*c.*) A guarantees payment to B of the price of five sacks of flour, to be delivered by B to C, and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards, B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

130. A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

Revocation of continuing guarantee.

Illustrations.

(*a.*) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees, on default of C.

(*b.*) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

131. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

Revocation of continuing guarantee by surety's death.

132. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Liability of two persons primarily liable, not affected by arrangement between them that one shall be surety on other's default.

Illustration.

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

133. Any variance, made without the surety's consent, in the terms of the contract between the principal and the creditor, discharges the surety as to transactions subsequent to the variance.

Discharge of surety by variance in terms of contract.

Illustrations.

(*a.*) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(*b.*) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.

(*c.*) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

(*d.*) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(*e.*) C contracts to lend B 5,000 rupees on the first March. A guarantees re payment. C pays the 5,000 rupees to B on the first January. A is discharged from his liability, as the contract has been varied, inasmuch as C might sue B for the money before the first of March.

Discharge of surety by release or discharge of principal debtor.

134. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.[a]

Illustrations.

(*a.*) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(*b.*) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts

[a]See *supra* secs. 39, 53, 54, 55, 62, 63, 67, 118, 120.

a stream of water which is necessary for the irrigation of A's land, and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(*c.*) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.

135. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

Surety not discharged when contract made with third person to give time to principal.

136. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

Creditor's forbearance to sue does not discharge surety.

137. Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him, does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Illustration.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

Release of one co-surety does not discharge others.

138. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.[a]

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

139. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Illustrations.

(*a.*) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.[b]

(*b.*) C lends money to B on the security of a joint and several promissory note made in C's favour by B, and by A as surety for B, together with a bill of sale of

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[a] See sec. 44 *supra* [b] See sec. 133 *supra*.

B's furniture, which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A is discharged from liability on the note.

(*c*.) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

Rights of surety on payment or performance.

140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.[a]

Surety's right to benefit of creditor's securities.

141. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.[b]

Illustrations.

(*a*.) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(*b*.) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

(*c*.) A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

Guarantee obtained by misrepresentation, invalid.

142. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Guarantee obtained by concealment, invalid.

143. Any guarantee which the creditor has obtained by means of keeping silence as to a material circumstance, is invalid.

Illustrations.

(*a*.) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not

[a] *e. g.*, the right to stop in transit. [b] See sec. 139 *supra*.

acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(*b.*) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

Guarantee on contract that creditor shall not act on it until co-surety joins.

144. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.[a]

Implied promise to indemnify surety.

145. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Illustrations.

(*a.*) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but he is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

(*b.*) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A, and, on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(*c.*) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

Co-sureties liable to contribute equally.

146. Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.[b]

Illustrations.

(*a.*) A, B and C are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B and C are liable, as between themselves, to pay 1,000 rupees each.

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[a] See sec. 33 *supra*.

[b] See sec. 43 *supra*.

(*b.*) A, B and C are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter, and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

Liability of co-sureties bound in different sums.

147. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.[a]

Illustrations.

(*a.*) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B and C are each liable to pay 10,000 rupees.

(*b.*) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(*c.*) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. A, B and C have to pay each the full penalty of his bond.

CHAPTER IX.—Of Bailment.

'Bailment,' 'bailor,' and 'bailee' defined.

148. A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the 'bailor.' The person to whom they are delivered is called the 'bailee.'

Explanation.—If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

Delivery to bailee how made.

149. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

Bailor's duty to disclose

150. The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the

[a] See sec. 43 *supra.*

use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

Faults in goods bailed.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

(*a.*) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(*b.*) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

151. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

Care to be taken by bailee.

152. The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

Bailee when not liable for loss, &c., of thing bailed.

153. A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Termination of bailment by bailee's act inconsistent with conditions.

Illustration.

A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

154. If the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Liability of bailee making unauthorized use of goods bailed.

Illustrations.

(*a.*) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

(*b.*) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

155. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Effect of mixture, with bailor's consent, of his goods with bailee's.

Effect of mixture, without bailor's consent, when the goods can be separated.

156. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Illustration.

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark: A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage.

Effect of mixture, without bailor's consent, when the goods cannot be separated.

157. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods, and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Illustration.

A bails a barrel of Cape flour, worth Rs. 45, to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

Repayment, by bailor, of necessary expenses.

158. Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Restoration of goods lent gratuitously.

159. The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.[a]

Return of goods bailed on expiration of time or accomplishment of purpose.

160. It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.[b]

Bailee's responsibility when goods are not duly returned.

161. If, by the fault of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

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[a] See Story, *Bailments*, § 258.

[b] But see secs. 24, 152 *supra* and 170 *infra*, to the provisions of which this section must be subject.

162. A gratuitous bailment is terminated by the death either of the bailor or of the bailee. Termination of gratuitous bailment by death.

163. In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed. Bailor entitled to increase or profit from goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

164. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them. Bailor's responsibility to bailee.

165. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary. Bailment by several joint owners.

166. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.[a] Bailee not responsible on re-delivery to bailor without title.

167. If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods. Right of third person claiming goods bailed.

168. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.[b] Right of finder of goods. May sue for specific reward offered.

169. When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it— When finder of thing commonly on sale may sell it.

(1) when the thing is in danger of perishing or of losing the greater part of its value, or,

(2) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.[c]

170. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a Bailee's particular lien.

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[a] See Act No. I of 1872, s. 117. [b] Story, *Bailments*, § 121a. [c] *New York Civil Code*, § 943.

right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Illustrations.

(*a.*) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(*b.*) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give A three months' credit for the price. B is not entitled to retain the coat until he is paid.

General lien of bankers, factors, wharfingers, attorneys and policy-brokers.

171. Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods[a] bailed to them[b]; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.[c]

Bailments of Pledges.

'Pledge,' 'pawnor,' and 'pawnee' defined.

172. The bailment of goods as security for payment of a debt or performance of a promise is called 'pledge.' The bailor is in this case called the 'pawnor.' The bailee is called the 'pawnee.'

Pawnee's right of retainer.

173. The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Pawnee not to retain for debt or promise other than that for which goods pledged. Presumption in case of subsequent advances.

174. The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

Pawnee's right as to extraordinary expenses incurred.

175. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right where pawnor makes default.

176. If the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise, in respect of which the goods were pledged, the pawnee may bring a suit[d] against the pawnor upon the

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a whether belonging to the bailor or not.

b as such ?

c Sec. 1, *supra*, seems to save the lien given to Railway Companies by Act No. XVIII of 1854, s. 12. As to the lien of an agent, see sec. 221 *infra*.

d within three years from the making of the loan or the breach of the promise, Act No. IX of 1871, Sched. II, Nos. 56, 115.

debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

Defaulting pawnor's right to redeem.

177. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them[a]; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

Pledge by possessor of goods, or of documentary title to goods.

178. A person who is in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods, or documents: Provided that the pawnee acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly:

Provided also that such goods or documents have not been obtained from their lawful owner, or from any person in lawful custody of them, by means of an offence or fraud.[b]

Pledge where pawnor has only a limited interest.

179. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Suits by Bailees or Bailors against Wrong-Doers.

Suit by bailor or bailee against wrong-doer.

180. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Apportionment of relief or compensation obtained by such suits.

181. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

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[a] See Act No. IX of 1871, Sched II, No. 147.
[b] See 5 & 6 Vic, c. 39, ss. 1 and 3.

CHAPTER X.—AGENCY.

Appointment and Authority of Agents.

'Agent' and 'principal' defined.

182. An 'agent' is a person employed to do any act for another,[a] or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the 'principal.'

Who may employ agent.

183. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.[b]

Who may be an agent.

184. As between the principal and third persons, any person may become an agent; but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

Consideration not necessary.

185. No consideration is necessary to create an agency.

Agent's authority may be expressed or implied.

186. The authority of an agent may be expressed or implied.[c]

Definitions of express and implied authority.

187. An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Illustration.

A owns a shop in Serampore, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

Extent of agent's authority.

188. An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business, has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations.

(*a.*) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(*b*) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business.

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a cf. s. 225, *infra*. As to the effect of an agent's fraud, see ss. 17 and 238.

b cf. s. 11 *supra*.

c But see Act No. VIII of 1859, s. 18 and Act No. VIII of 1871, s. 33.

189. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.[a]

Agent's authority in an emergency.

Illustrations.

(*a.*) An agent for sale may have goods repaired if it be necessary.

(*b.*) A consigns provisions to B at Calcutta, with directions to send them immediately to C, at Katák. B may sell the provisions at Calcutta, if they will not bear the journey to Katák without spoiling.

Sub-Agents.

190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

When agent cannot delegate.

191. A 'sub-agent' is a person employed by, and acting under the control of, the original agent in the business of the agency.

'Sub-agent' defined.

192. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.

Representation of principal by sub-agent properly appointed.

The agent is responsible to the principal for the acts of the sub-agent:

Agent's responsibility for sub-agent.

The sub-agent is responsible for his acts to the agent, but not to the principal, except in cases of fraud or wilful wrong.

Sub-agent's responsibility.

193. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented by or responsible for the acts of the person so employed,[b] nor is that person responsible to the principal.

Agent's responsibility for sub-agent appointed without authority.

194. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Relation between principal and person duly appointed by agent to act in business of agency.

Illustrations.

(*a.*) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

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[a] But see s. 214 *infra*.

[b] unless, of course, he ratifies them, see sec. 196 *infra*.

(*b.*) A authorizes B, a merchant in Calcutta, to recover the monies due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is solicitor for A.

Agent's duty in naming such person.

195. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case: and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Illustrations.

(*a.*) A instructs B, a merchant, to buy a ship for him. B employs a ship-surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

(*b.*) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Ratification.

Right of person as to acts done for him without his authority.

Effect of ratification.

196. Where acts[a] are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

Ratification may be expressed or implied.

197. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Illustrations.

(*a.*) A, without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

(*b.*) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.

Knowledge requisite to valid ratification.

198. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Effect of ratifying unauthorized act forming part of a transaction.

199. A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

Ratification of unauthorized act

200. An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of

[a] *i. e.*, lawful acts.

subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect. cannot injure third person.

Illustrations.

(*a.*) A, not being authorized thereto by B, demands, on behalf of B, the delivery of a chattel, the property of B, from C who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(*b.*) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

Revocation of Authority.

201. An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors. Termination of agency.

202. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. Termination of agency, where agent has an interest in subject-matter.

Illustrations.

(*a.*) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(*b.*) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

203. The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal. When principal may revoke agent's authority.

204. The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency. Revocation where authority has been partly exercised.

Illustrations.

(*a.*) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(*b.*) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

Compensation for revocation by principal, or renunciation by agent.

205. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation[a] to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Notice of revocation or renunciation.

206. Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Revocation and renunciation may be expressed or implied.

207. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

When termination of agent's authority takes effect as to agent and as to third persons.

208. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before if becomes known to them.

Illustrations.

(*a.*) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(*b.*) A, at Madras, by letter directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(*c.*) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

Agent's duty on termination of agency by principal's death or insanity.

209. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

[a] See sec 73 *supra.*

210. The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Termination of sub agent's authority.

Agent's Duty to Principal.

211. An agent is bound to conduct the business of his principal according to the directions given by the principal, [a] or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and if any profit accrues, he must account for it.

Agent's duty in conducting principal's business.

Illustrations.

(*a.*) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investments.

(*b.*) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

212. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

Skill and diligence required from agent.

Illustrations.

(*a.*) A, a merchant in Calcutta, has an agent, B, in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as, *e. g.*, by variation of rate of exchange—but not further.

(*b.*) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

[a] But see sec 189 *supra*.

(*c*) A, an insurance-broker employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

(*d.*) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Agent's accounts.

213. An agent is bound to render proper accounts to his principal on demand.

Agent's duty to communicate with principal.

214. It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.[a]

Right of principal when agent deals, on his own account, in business of agency without principal's consent.

215. If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case show, either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustrations.

(*a.*) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(*b.*) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

Principal's right to benefit gained by agent dealing on his own account in business of agency.

216. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustration.

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

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[a] See sec. 189 *supra*.

217. An agent may retain,[a] out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's right of retainer out of sums received on principal's account.

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

Agent's duty to pay sums received for principal.

219. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

When agent's remuneration becomes due.

220. An agent who is guilty of misconduct in the business of the agency,[b] is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Agent not entitled to remuneration for business misconducted.

Illustrations.

(*a.*) A employs B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(*b*) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

221. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether moveable or immoveable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same, has been paid or accounted for to him.[c]

Agent's lien on principal's property.

Principal's Duty to Agent.

222. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Agent to be indemnified against consequences of lawful acts.

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[a] See sec. 221 *infra*.

[b] See secs. 195, 211, 212, 213, 214, 218 *supra*.

[c] As to the general lien of an agent who is a banker, factor, attorney or policy-broker, sec. 171 *supra*.

Illustrations.

(*a.*) B, at Singápur, under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.

(*b*) B, a broker at Calcutta by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B.[a] B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. A is liable to B for such damages, costs and expenses.

Agent to be indemnified against consequences of acts done in good faith.

223. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

Illustrations.

(*a.*) A, a decree-holder and entitled to execution of B's goods, requires the officer of the Court to seize certain goods, representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions.

(*b*) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C, and for B's own expenses.

Non-liability of employer of agent to do a criminal act.

224. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise to indemnify him against the consequences of that act.[b]

Illustrations.

(*a.*) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(*b.*) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

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[a] It must be assumed that the disclosed principal could not be sued, see sec. 230 *infra*.
[b] See sec. 24 *supra*.

225. The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Compensation to agent for injury caused by principal's neglect.

Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

Effect of Agency on Contracts with third persons.

226. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person.

Enforcement and consequences of agent's contracts.

Illustrations.

(*a.*) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set-off against that claim a debt due to himself from B.

(*b.*) A, being B's agent, with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

227. When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as betwen him and his principal.

Principal how far bound, when agent exceeds authority.

Illustration.

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

228. Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Principal not bound when excess of agent's authority is not separable.

Illustration.

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

229. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Consequences of notice given to agent.

Illustrations.

(*a.*) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(*b.*) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal

230. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary.

Such a contract shall be presumed to exist in the following cases:—

(1.) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad:

(2.) Where the agent does not disclose the name of his principal:

(3.) Where the principal, though disclosed, cannot be sued.

Rights of parties to a contract made by agent not disclosed.

231. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

Performance of contract with agent supposed to be principal.

232. Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration.

A, who owes 500 rupees to B, sells 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

233. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Right of person dealing with agent personally liable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

234. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.

235. A person untruly[a] representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

Liability of pretended agent.

236. A person with whom a contract has been entered into in the character of agent, is not entitled to require the performance of it, if he was in reality acting, not as agent, but on his own account.

Person falsely contracting as agent, not entitled to performance.

237. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations, if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Liability of principal inducing belief that agent's unauthorized acts were authorized.

Illustrations.

(*a.*) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(*b*) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

238. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals[b]; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

Effect, on agreement, of misrepresentation or fraud by agent.

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[a] See sec. 208 *supra*.

[b] See s. 250 *infra*.

Illustrations.

(*a.*) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

(*b.*) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

CHAPTER XI.—Of Partnership.

'Partnership' defined.

239. 'Partnership' is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them.[a]

'Firm' defined.

Persons who have entered into partnership with one another are called collectively a 'firm.'

Illustrations.

(*a.*) A and B buy 100 bales of cotton, which they agree to sell for their joint account; A and B are partners in respect of such cotton.

(*b.*) A and B buy 100 bales of cotton, agreeing to share it between them. A and B are not partners.

(*c.*) A agrees with B, a goldsmith, to buy and furnish gold to B, to be worked up by him and sold, and that they shall share in the resulting profit or loss. A and B are partners.

(*d.*) A and B agree to work together as carpenters, but that A shall receive all profits and shall pay wages to B. A and B are not partners.

(*e.*) A and B are joint owners of a ship. This circumstance does not make them partners.

Lender not a partner by advancing money for share of profits.

240. A loan to a person engaged or about to engage in any trade or undertaking, upon a contract with such person that the lender shall receive interest at a rate varying with the profits, or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner, or render him responsible as such.[b]

Property left in business by retiring partner, or deceased partner's representative.

241. In the absence of any contract to the contrary, property left by a retiring partner, or the representative of a deceased partner, to be used in the business, is to be considered a loan within the meaning of the last preceding section.

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[a] This would apply to members of joint stock companies: but the law applicable to them is saved by sec 266 *infra*

[b] See *Mollwo* v. *Court of Wards*, 10 Beng. 312.

242. No contract for the remuneration of a servant or agent of any person, engaged in any trade or undertaking, by a share of the profits of such trade or undertaking, shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

Servant or agent remunerated by share of profits, not a partner.

243. No person, being a widow or child of a deceased partner of a trader, and receiving, by way of annuity, a proportion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.

Widow or child of deceased partner receiving annuity out of profits, not a partner.

244. No person receiving, by way of annuity or otherwise, a portion of the profits of any business, in consideration of the sale by him of the good-will of such business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.[a]

Person receiving portion of profits for sale of good-will, not a partner.

245. A person who has, by words spoken or written, or by his conduct, led another to believe that he is a partner in a particular firm, is responsible to him as a partner in such firm.

Responsibility of person leading another to believe him a partner.

246. Any one consenting to allow himself to be represented as a partner, is liable, as such, to third persons who, on the faith thereof, give credit to the partnership.[b]

Liability of person permitting himself to be represented as a partner.

247. A person who is under the age of majority according to the law to which he is subject,[c] may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

Minor partner not personally liable, but his share is.

248. A person who has been admitted to the benefits of partnership under the age of majority,[c] becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice, within a reasonable time, of his repudiation of the partnership.

Liability of minor partner on attaining majority.

249. Every partner is liable for all debts and obligations incurred while he is a partner in the usual course of business by or on behalf of the partnership; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for any thing done before he became a partner.

Partner's liability for debts of partnership.

250. Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm.

Partner's liability to third person for neglect or fraud of copartner.

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[a] 28 & 29 Vic., c. 86. [b] See Act No. I of 1872, s. 109. [c] See Act No. IX of 1875.

Partner's power to bind co-partners.

251. Each partner who does any act necessary for, or usually done in, carrying on the business of such a partnership as that of which he is a member, binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.

Exception.—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

Illustrations.

(*a.*) A and B trade in partnership, A residing in England, and B in India. A draws a bill of exchange in the name of the firm. B has no notice of the bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the circumstances under which the bill was drawn.

(*b.*) A, being one of a firm of solicitors and attorneys, draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bill.

(*c.*) A and B carry on business in partnership as bankers. A sum of money is received by A on behalf of the firm. A does not inform B of such receipt, and afterwards A appropriates the money to his own use. The partnership is liable to make good the money.

(*d.*) A and B are partners. A, with the intention of cheating B, goes to a shop and purchases articles on behalf of the firm, such as might be used in the ordinary course of the partnership business, and converts them to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of the goods.

Annulment of contract defining partners' rights and obligations.

252. Where partners have by contract regulated and defined, as between themselves, their rights and obligations, such contract can be annulled or altered only by consent of all[a] of them, which consent must either be expressed or be implied from a uniform course of dealing.

Illustration.

A, B and C, intending to enter into partnership, execute written articles of agreement, by which it is stipulated that the nett profits arising from the partnership business shall be equally divided between them. Afterwards they carry on the partnership business for many years, A receiving one-half of the nett profits, and the other half being divided equally between B and C. All parties know of and acquiesce in this arrangement. This course of dealing supersedes the provision in the articles as to the division of profits.

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[a] cf. sec. 253, clause (5), *infra*.

253. In the absence of any contract to the contrary, the relations of partners to each other are determined by the following rules :—

Rules determining partners' mutual relations, where no contract to contrary.

(1.) All partners are joint owners of all property originally brought into the partnership stock, or bought with money belonging to the partnership, or acquired for purposes of the partnership business. All such property is called partnership property. The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss :

(2.) All partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership :

(3.) Each partner has a right to take part in the management of the partnership business :

(4.) Each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business :

(5.) When differences arise as to ordinary matters connected with the partnership business, the decision shall be according to the opinion of the majority of the partners; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners[a] :

(6.) No person can introduce a new partner into a firm without the consent of all the partners :

(7.) If, from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members :

(8.) Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time :

(9.) Where a partnership has been entered into for a fixed term, no partner can, during such term, retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of Court :

(10.) Partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

254. At the suit of a partner the Court may dissolve the partnership in the following cases :—

When Court may dissolve partnership.

(1.) When a partner becomes of unsound mind :

(2.) When a partner, other than the partner suing, has been adjudicated an insolvent under any law relating to insolvent debtors :

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[a] Sec. 252 *supra.*

(3.) When a partner, other than the partner suing, has done any act by which the whole interest of such partner is legally transferred to a third person:

(4.) When any partner becomes incapable of performing his part of the partnership contract:

(5.) When a partner, other than the partner suing, is guilty of gross misconduct in the affairs of the partnership or towards his partners:

(6.) When the business of the partnership can only be carried on at a loss.

Dissolution of partnership by prohibition of business.

255. A partnership is in all cases dissolved by its business being prohibited by law.

Rights and obligations of partners in partnership continued after expiry of term for which it was entered into.

256. If a partnership entered into for a fixed term be continued after such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner.

General duties of partners.

257. Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

Account to firm of benefit derived from transaction affecting partnership.

258. A partner must account to the firm for any benefit derived from a transaction affecting the partnership.

Illustrations.

(*a.*) A, B and C are partners in trade. C, without the knowledge of A and B, obtains for his own sole benefit a lease of the house in which the partnership business is carried on. A and B are entitled to participate, if they please, in the benefit of the lease.

(*b.*) A, B and C carry on business together in partnership as merchants trading between Bombay and London. D, a merchant in London, to whom they make their consignments, secretly allows C a share of the commission which he receives upon such consignments, in consideration of C's using his influence to obtain the consignments for him. C is liable to account to the firm for the money so received by him.

Obligations, to firm, of partner carrying on competing business.

259. If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

260. A continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or in respect of the transactions of which, such guarantee was given.[a]

Revocation of continuing guarantee by change in firm.

261. The estate of a partner who has died is not, in the absence of an express agreement, liable in respect of any obligation incurred by the firm after his death.

Non-liability of deceased partner's estate for subsequent obligations.

262. Where there are joint debts due from the partnership, and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner must be applied in payment of his separate debts or paid to him. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

Payment of partnership-debts, and of separate debts.

263. After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding-up the business of the partnership.

Continuance of partners' rights and obligations after dissolution.

264. Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they themselves had notice of such dissolution.

Notice of dissolution.

265. In the absence of any contract to the contrary, after the termination of a partnership, each partner or his representatives may apply to the Court to wind up the business of the firm, to provide for the payment of its debts and to distribute the surplus according to the shares of the partners respectively.

Right of partners to apply for winding-up by Court after termination of partnership.

Explanation.—The Court in this section means a Court not inferior to the Court of a District Judge within the local limits of whose jurisdiction the place or principal place of business of the firm is situated.

266. Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships, and joint-stock companies, shall be regulated by the law for the time being in force relating thereto.[b]

Limited liability partnerships, incorporated partnerships, and joint-stock companies.

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[a] 19 & 20 Vic., c 97, sec. 4.

[b] See Act No. X of 1866 and the following special Acts . V of 1838, amended by V of 1851 (Bengal Bonded Warehouse) V of 1857, amended by XI of 1867 (Oriental Gas Company), XI of 1876 (Presidency Banks), and Madras Act VI of 1869 (Madras Equitable Assurance Society).

SCHEDULE.

ENACTMENTS REPEALED.

Statutes.

Number and year of Statute.	TITLE.	Extent of repeal.
Stat. 29 Car. II, cap. 3.	An Act for the prevention of Frauds and Perjuries...	Sections one, two, three, four and seventeen.
Stat. 11 & 12 Vic., cap. 21.	To consolidate and amend the law relating to insolvent debtors in India.	Section forty-two.

Acts.

Number and year of Act.	TITLE.	Extent of repeal.
Act XIII of 1840	An Act for the amendment of the law regarding factors, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 4 Geo. iv, chap. 83, as altered and amended by the Statute 6 Geo. iv, chap. 94.	The whole.
Act XIV of 1840	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 9 Geo. iv, chap. 14.	The whole.
Act XX of 1844	An Act to amend the law relating to Advances *bonâ fide* made to Agents intrusted with goods, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 5 & 6 Victoria, c. 39, as altered by this Act.	The whole.
Act XXI of 1848	An Act for avoiding Wagers	The whole.
Act V of 1866 ...	An Act to provide a summary procedure on bills of exchange, and to amend in certain respects the commercial law of British India.	Sections nine and ten.
Act XV of 1866	An Act to amend the law of Partnership in India ...	The whole.
Act VIII of 1867	An Act to amend the law relating to Horse-racing in India.	The whole.

THE CODE OF CRIMINAL PROCEDURE.

CONTENTS.

Preamble.

PART I.

CHAPTER I.—PRELIMINARY, REPEAL, LOCAL EXTENT AND DEFINITIONS.

SECTION.

1. Short title.
   Local extent.
2. Repeal of enactments.
   Saving of special procedure.
   References to Code of Criminal Procedure.
   References in former Acts.
   Certain specified references.
3. [*Repealed.*]
4. Definitions.

PART II.

CONSTITUTION AND POWERS OF THE CRIMINAL COURTS.

CHAPTER II.—OF CRIMINAL COURTS.

5. Grades of Criminal Courts.
6. Inquiries by Magistrates.
7. What Courts to try offences.
8. Offences under local and special laws.
9. Appointment and removal of Judges and Magistrates.
10. Saving of existing incumbents.
11. Inquiry and trial in case of European British subjects.

CHAPTER III.—OF COURTS OF SESSION.

12. Sessions Divisions.
13. Power to alter Divisions.
14. Existing local jurisdictions of Sessions Courts to be Sessions Divisions.
15. One Court for each Division.
16. Appointment and powers of Sessions Judges.
17. Appointment and powers of Additional and Joint Sessions Judges.
18. Appointment and powers of Assistant Sessions Judges.

Chapter IV.—Of Magistrates and their Powers.

Section.

19. Magistrates to be of three classes.
20. Sentences which Magistrates may pass.
    Powers of Magistrates, First Class
    Powers of Magistrates, Second Class.
    Powers of Magistrates, Third Class.
21. Powers conferred upon Magistrates.
22. Powers common to all Magistrates.
23. Powers which Local Government and Magistrate of the District may confer on Magistrates of the Third Class.
24. Powers of Magistrates of the Second Class.
25. Powers which may be conferred on Magistrates of the Second Class.
26. Powers of Magistrates of the First Class.
27. Powers which may be conferred on Magistrates of the First Class.
28. Powers of Magistrates of Divisions of Districts.
29. Powers which Local Government may confer on Magistrates of Divisions of Districts.
30. Powers of Magistrates of Districts.
31. Saving of other powers.
32. Irregularities which do not vitiate proceedings.
33. When irregular commitments may be validated.
34. Irregularities which render proceedings void.

The Magistrate of the District.

35. Magistrate of the District.
36. Powers with which Deputy Commissioners and Chief executive officers of Districts may be invested.

Subordinate Magistrates.

37. Subordinate Magistrates.
    Proviso.
38. Power to determine local jurisdiction of a Magistrate of District.
39. Division of Districts into divisions.
    Existing divisions preserved.
40. Local Government may put Magistrate in charge of division.
    Delegation of power to Magistrate of District.
41. Subordination of officers to Magistrate of Division of District.
42. "Special Magistrates."
43. Mode of conferring powers.
44. Transfer of cases to Subordinate Magistrate.
45. Procedure of Magistrate in cases beyond his jurisdiction.
46. Procedure when Magistrate cannot pass sentence sufficiently severe.
    Magistrate may, in the first instance, commit accused for trial before Court of Session.
47. Magistrate may withdraw or refer cases.
48. Local Government may empower Magistrates of Districts to withdraw classes of cases.

SECTION.

49. Local Government may authorize Magistrate of District to distribute business by localities.

Magistrates' Benches.

50. Power to invest Magistrates sitting as a bench with certain powers.
51. Powers exercisable by such bench in absence of special directions.
52. Magistrate of the District may frame rules for guidance of benches.
53. Magistrate of District may vary or annul rules made under section 52.

Continuance and Alteration of Powers.

54. Powers may be varied or cancelled.
55. Powers of officers temporarily succeeding to vacancies in office of Magistrate of District.
56. Continuance of powers of officers transferred.

CHAPTER V.—OF PUBLIC PROSECUTORS.

57. Appointment of public prosecutor.
58. Appointment may be for particular case or generally.
59. Private persons may not act as prosecutors or employ counsel without permission of the Court.
60. He may plead in all Courts in cases under his charge.
Barristers, &c., privately instructed, to be under his direction.
61. Effect of withdrawal of charge by public prosecutor.
62. Notice to public prosecutor of appeal in cases prosecuted by him.

CHAPTER VI.—THE PLACE OF INQUIRY AND TRIAL.

63. Place for inquiry and trial of offence.
64. High Court may transfer case, or direct trial in district other than that in which offence was committed.
64A. Power to transfer criminal cases and appeals.
65. Accused triable in district where act is done, or where consequence ensues.
66. Place for trial where act is offence by reason of relation to other offence.
67. Place for inquiry or trial where scene of offence is uncertain;
or not in one district only;
or offence is continuing;
or consists of several acts.
68. Murder as a thug, dacoity or dacoity with murder.
69. High Court to decide, in case of doubt, district where inquiry shall take place.
70. Effect, on sentence, of holding investigation, inquiry or trial in wrong district.

CHAPTER VII.—OF CRIMINAL JURISDICTION OVER EUROPEAN BRITISH SUBJECTS.

SECTION.

71. "European British subjects."
72. Officers who may inquire into and try offences committed by European British subjects.
73. Who may hear complaints and issue process against them.
74. Magistrates competent to receive complaints against them.
When such Magistrate may try, and extent of his jurisdiction.
75. When commitment is to be to Court of Session.
76. Jurisdiction of Court of Session.
When Sessions Judge finds his powers inadequate.
77. Procedure when Sessions Judge is not a European British subject.
78. Mode of conducting trials by Court of Session.
79. Appeal from conviction of such subject by Magistrate.
80. Appeal from conviction by Court of Session.
81. Right of European British subject under detention to apply for order to produce his person.
Procedure on such application.
82. Power of High Courts as to issue of writs.
83. Procedure on claim of European British subject to be dealt with as such.
84. Failure to plead status a waiver.
85. Trial of person not a European British subject under this chapter.
86. Procedure of High Courts.
87. Proceedings against European British subjects to be regulated by this Act.
88. Place of confinement.

PART III.

OF THE POLICE.

CHAPTER VIII.—OFFENCES OF WHICH INFORMATION MUST BE GIVEN TO THE POLICE, AND DUTY OF THE PUBLIC.

89. All persons to give information of certain offences.
90. Landholders and others bound to report certain matters.
91. All persons to assist Magistrate and Police in certain cases.

CHAPTER IX.—OF ARREST WITHOUT WARRANT.

92. When Police may arrest without warrant.
93. Person charged refusing to give his name and residence.
94. Arrest of vagabonds.

SECTION.

95. Police to prevent certain offences.
96. Information of design to commit such offences.
97. Arrest to prevent such offences.
98. Injury to public property.
99. Ingress to be allowed into house entered by person of whom Police in search.
100. Procedure where ingress not obtainable.
101. Person arrested to be taken before Magistrate or officer in charge of Police-station.
102. Procedure when Police officer deputes subordinate to arrest without warrant.
103. Police may pursue offenders into other jurisdictions.
104. Detention of offenders attending Court.

Of Arrest by Private Persons.

105. Arrest by private persons.
106. Arrest of deserters from British ships.
107. How to proceed with person arrested.
108. Offence committed in Magistrate's presence.

CHAPTER X.—POWERS OF THE POLICE TO INVESTIGATE.

109. What offences Police officer may investigate.
110. What offences Police may not investigate.
111. Saving of powers vested in Police by special or local law.
112. Complaint to Police to be in writing.
113. Complaint in non-cognizable cases.
114. Upon information, &c., Police officer in charge of station to proceed in person or depute a subordinate.
115. Preliminary inquiry.
116. Where local investigation dispensed with.
117. Where Police officer in charge sees no sufficient ground for investigation.
118. Police officer's power to summon witnesses.
119. Oral examination of witnesses by Police.
Proviso.
120. No inducement to be offered to confess.
121. Police not to record statement or confession.
Proviso.
122. Powers of Magistrates to record statements and confessions.
123. Investigation by Police.
124. Accused not to be detained by Police more than twenty-four hours without special authority.
125. Procedure of Police in case of deficient evidence.
126. Daily record of proceedings.
127. Report of Police officer.
128. Admission to bail.
129. Bail not to be excessive.
Terms of security.

SECTION.

130. Complainants and witnesses to execute recognizances to appear.
131. Complainants and witnesses not to be subjected to restraint.
Recusant complainant or witness may be forwarded in custody.
132. Police to report apprehensions.
Discharge of person apprehended.
133. Police to inquire and report on unnatural and sudden deaths.
134. Power to summon persons.
135. Inquiry into cause of such death by nearest Magistrate.
136. Substitute for officer in charge of Police-station during his absence or illness.
137. Powers of superior officers of Police.
138. Assistant District Superintendent of Police may exercise powers of District Superintendent.

PART IV.

OF PROCEEDINGS TO COMPEL APPEARANCE.

CHAPTER XI.—OF COMPLAINTS TO A MAGISTRATE.

139. Processes.
140. When summons or warrant may be issued.
141. Who may entertain complaints.
Effect of reference.
Effect of complaint or Police report.
142. Who may act without complaint.
Complaint or sanction required in certain cases.
143. Who may commit for trial.
144. Examination of complainant.
Effect of irregularity.
145. Procedure by Magistrate not empowered to hear complaint.
146. Postponement of issue of process.
147. Dismissal of complaint.
Issue of process.
148. In what cases a summons may issue.
149. In what cases warrant may issue on complaint.
150. Warrant to arrest, if summons not obeyed.
151. Magistrate may dispense with personal attendance of accused.

CHAPTER XII.—OF THE SUMMONS.

152. Form of summons.
153. Summons by whom served.
154. Summons how served.
155. Service when accused cannot be found.
156. Issue of warrant in addition to summons.

SECTION.

157. Summons or warrant for offence committed beyond local jurisdiction.
158. Provisions in this chapter, as to form, service and issue of summons, applicable to all summonses.

CHAPTER XIII.—OF THE WARRANT.

159. Form of warrant.
Effect of warrant of arrest.
160. Magistrate may direct bail to be taken.
Bail-bond to be forwarded.
161. Warrants to whom directed.
162. Warrant may be directed to landholders, &c.
163. Warrants directed to any person other than a Police officer.
164. Warrant to several persons.
165. Warrant directed to Police officer.
166. Magistrate issuing warrant may superintend its execution.
Arrest in presence of Magistrate.
167. Where warrant may be executed.
168. Magistrate may issue warrant for execution in places outside his jurisdiction.
169. Procedure on arrest of person against whom warrant was issued.
170. Procedure by Magistrate before whom arrested person is brought.
171. Proclamation for person absconding.
172. Attachment of property of person absconding.
173. Restoration of forfeited property.
174. Magistrate's procedure on arrest, under his own warrant, for offence committed out of his jurisdiction.
175. Procedure where such warrant issued by Subordinate Magistrate.
176. Notification of substance of warrant.
177. Warrant how executed.
178. Resisting endeavour to arrest.
179. Search of house entered by person against whom warrant issued.
180. Breaking of door or window.
181. Breaking open zanáná.
182. No unnecessary restraint.
183. Person arrested to be brought before Magistrate.
184. Inducements to disclosure or confession.
185. Provisions as to warrant and its execution and issue applicable to all warrants of arrest.

PART V.

OF INQUIRIES AND TRIALS.

CHAPTER XIV.—PRELIMINARY.

186. Right of accused to be defended.
Where accused person does not understand the proceedings.

SECTION.
187. Criminal Courts to be open.
188. Compounding offences.

CHAPTER XV.—OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

189. Procedure in preliminary inquiries.
190. Examination of complainant and witnesses for prosecution.
191. Examination to be in presence of accused.
Accused may cross-examine.
192. Power of Magistrate to summon and examine any person.
193. Examination of accused.
194. Adjournment of inquiry and remand.
195. When accused person to be discharged.
196. When accused is to be committed for trial.
197. When commitment to be to a High Court.
198. Contents of charge.
Copy of charge to be sent to Court of Session.
199. Copy of charge to be furnished to accused.
200. List of witnesses for defence on trial.
Further list.
201. Copies of depositions to be furnished to accused.
202. When commitment made, Magistrate to give notice to Government prosecutor.

CHAPTER XVI.—OF THE TRIAL OF SUMMONS CASES BY MAGISTRATES.

203. Procedure in summons cases.
Object and effect of complaint.
Defect in complaint or summons.
204. Accused person may be admitted to bail, or allowed to be at large on his personal recognizance.
205. Non-appearance of complainant.
206. Substance of complaint to be stated.
Conviction on admission of truth of complaint.
207. Procedure when no such admission is made.
208. Adjournment.
209. Compensation in cases of frivolous or vexatious complaints.
Recovery of such compensation.
210. Withdrawal of complaint.
211. Acquittal.
Sentence.
212. Effect of dismissal.

CHAPTER XVII.—OF THE TRIAL OF WARRANT CASES BY MAGISTRATES.

213. Procedure in warrant cases.
214. Sections 190 to 194 to apply.
215. Discharge of accused.

SECTION.

216. Charge to be drawn when offence is apparently proved.
217. Plea.
218. Defence.
219. Evidence for defence.
220. Acquittal.
Conviction.
221. Procedure when, after commencement of trial, Magistrate finds case beyond his jurisdiction.

CHAPTER XVIII.—OF SUMMARY TRIALS.

222. What offences may be tried summarily.
223. Power to invest Magistrates with power to try summarily.
224. Power to invest Bench of first class Magistrates with summary powers.
225. Power to invest Bench of inferior Magistrates with summary powers.
226. Procedure in trials under this chapter.
227. Entries in cases where there is no appeal.
228. Record in appealable cases.
229. Language of entries under section 227, and of judgment under section 228.
230. Bench of Magistrates may be authorized to employ clerk.

CHAPTER XIX.—TRIAL BY COURT OF SESSION.

231. Cognizance of offences by Court of Session in its original jurisdiction.
232. Trials to be by jury or with assessors.
233. Local Government may order trials before Court of Session to be by jury.
234. Jury for trial of Europeans (not being British subjects) or Americans.
Election to be tried without jury.
235. Trial before Court of Session to be conducted by Public Prosecutor.
236. Number of jury.
237. Commencement of trial.
Plea of guilty.
238. Refusal to plead or claim to be tried.
239. Assessors how chosen.
240. Jurors how chosen.
241. Jury for trial of persons not Europeans or Americans.
242. Jury when European or American charged jointly with one of another race.
243. Names of jurors to be called.
Objections to jurors.
Procedure where objection allowed.
244. Grounds of objection.
245. Juror to understand the language in which evidence is given or interpreted.

SECTION.
246. Foreman of jury.
247. Examination of witnesses.
248. Examination of accused before committing Magistrate.
249. Evidence given before committing Magistrate.
250. Examination of accused.
251. Defence.
252. Prosecutor's right of reply.
253. View by jury or assessors.
254. Procedure when juror becomes unable to attend.
255. Assessors' opinion, and charge to jury.
256. Duty of Judge.
257. Duty of jury.
258. When juryman or assessor may be examined.
259. Procedure when assessor is unable to attend.
260. Jury or assessors to attend at adjourned sitting.
261. Cases tried with assessors.
262. Decision vested in Judge.
263. Cases tried by juries.
Verdict to be given on each charge.
Judge may question jury.
Procedure where jury differ.
264. Postponement of trial.
Adjournment.
265. Successive trials by same jury.

PART VI.

APPEAL, REFERENCE AND REVISION.

CHAPTER XX.—APPEALS.

266. Appeals from officers exercising powers less than those of first class Magistrate.
267. Appeals in bad livelihood cases.
268. Appeals from convictions in contempt cases.
269. Appeal from Magistrates.
270. Appeals by persons convicted by officers invested under section 36.
Appeals from convictions of Assistant Sessions Judges.
271. Appeal from sentence of Sessions Judge.
271A. Procedure in case of sentence of death.
271B. Procedure where Judges of Court of appeal, &c., are equally divided.
272. No appeal in case of acquittal, except on behalf of Government.
273. No appeal against petty sentences of Sessions Court or Magistrate of first class.
274. Appeals from summary convictions.
Saving of sentences on European British subjects.
275. Copy of judgment to accompany petition.

SECTION.

276. Copies of proceedings.
277. Procedure when appellant in jail.
278. Summary rejection of appeal.
279. Notice when Appellate Court decides to hear appeal.
280. Appellate Court may alter, reverse or enhance sentence, or order re-trial.
281. Suspension of sentence pending appeal.
Release of appellant on bail.
282. Appellate Court may make or direct further inquiry.
283. Finding or sentence when reversible by reason of error or defect in charge or proceedings.
Appellate Court may reduce punishment.
284. Procedure in case of conviction by Court not having jurisdiction.
285. Finality of orders on appeal.
286. Unless otherwise provided, no appeal to lie.

CHAPTER XXI.—REFERENCE.

287. Sentence of death.
288. Power of High Court to confirm sentence or annul conviction.
289. Power to direct further inquiry, &c.
290. Confirmation or new sentence to be signed by two Judges.
291. When High Court consists of one Judge.

CHAPTER XXII.—SUPERINTENDENCE AND REVISION.

292. Power of High Court to make rules.
293. Calendars of trials by Subordinate Courts.
294. Power to call for records of Subordinate Courts.
295. Powers of Court of Session and Magistrate to call for record of Subordinate Courts.
296. Power to report to High Court.
Power to commit for re-trial.
297. Powers of revision.
Power to order commitment.
Power to alter finding and sentence.
Proviso as to power of altering finding.
Power to annul conviction.
Power to annul improper, and to pass proper, sentence.
Suspension of sentence.
Powers of revision confined to High Court.
Optional with Court of revision to hear parties.
298. Power to order inquiry into dismissed complaints.
299. Order on revision to be certified to lower Court or District Magistrate.
Procedure thereon.
300. Provisions of section 283 to apply.

PART VII.

EXECUTION.

CHAPTER XXIII.

SECTION.

301. Procedure in cases referred to High Court for confirmation.
302. Court of Session to send copy of sentence to District Magistrate.
Warrant of execution.
302A. Procedure after sentence in cases tried by Court inferior to Court of Session.
303. Form and direction of warrant of commitment.
304. Warrant with whom to be lodged.
305. Execution of sentence under section 301 or 302.
306. Postponement of capital sentence on pregnant woman.
307. Levy of fine.
Saving of especial procedure.
Who may issue warrant.
308. Payment of fine in compensation.
309. Imprisonment in default of payment of fine.
Proviso as to cases decided by a Magistrate.
310. Whipping, if awarded in addition to imprisonment, when to be inflicted.
311. Mode of inflicting the punishment.
312. Whipping not to be inflicted if offender not in fit state of health.
Stay of execution.
Not to be executed by instalments.
313. Procedure if punishment cannot be inflicted under section 312.
314. Sentence in cases of simultaneous conviction of several offences.
Maximum term of imprisonment.
315. Trial of previously convicted persons.
Proviso.
316. Currency of sentence on escaped convicts.
317. Sentence on offender already sentenced for another offence.
Proviso.
318. Confinement of youthful offenders in reformatories.
319. Places to which persons sentenced to transportation may be sent.
Local Government to direct removal of such persons to places appointed.
320. Persons sentenced to transportation while undergoing transportation under previous sentence.
321. Sentence of death.
322. Power to remit punishment.
Power to commute punishment.

PART VIII.

EVIDENCE.

CHAPTER XXIV.—SPECIAL RULES OF EVIDENCE IN CRIMINAL CASES.

SECTION.

323. Evidence of medical witness.
Court may summon medical witness.
324. Accused may be convicted on his own admission.
325. Report of chemical examiner.
Genuineness of signature may be presumed.
326. Previous conviction or acquittal how proved.
327. Recording evidence in absence of accused.
328. Convictions on evidence partly recorded by one Magistrate and partly by another.
329. Commitments on evidence partly recorded by one officer and partly by another.
330. When a commission may issue.
Mode of issuing commission.
Prosecutor and accused may examine witness.
Procedure when commission is required in Magistrate's cases.
Return of commission.

CHAPTER XXV.—EVIDENCE HOW TAKEN.

331. Examination of complainants and witnesses.
332. Manner of recording evidence;
333. in summons cases, and in trials by Magistrates of the first and second classes, of certain offences;
334. in all other cases before Magistrates, and in all proceedings before Courts of Session.
Evidence in English.
Memorandum when evidence not taken down in writing.
335. Local Government may direct evidence to be recorded by Sessions Judge or Magistrate himself in his vernacular;
or in English or in language in ordinary use in district.
336. In cases referred to in section 333, Magistrate may record as provided in section 334 or section 335.
337. Local Government to decide what language is in ordinary use.
338. Form of record of evidence.
339. Procedure as evidence of each witness is completed.
340. Interpretation of evidence to accused or his agent.
341. Remarks respecting demeanour of witness.

Of the Examination of Accused Persons.

342. Accused may be questioned.
343. Accused not punishable for refusal to answer.
344. No influence to be used to induce disclosures.

SECTION.

345. Accused not to be sworn.
346. Examination of accused how recorded.
347. Magistrate may tender pardon to accomplice.
348. High Court or Court of Session may direct tender of pardon.
349. When Magistrate, Court of Session or High Court may direct commitment of person to whom pardon has been tendered.

CHAPTER XXVI.—OF SECURING THE ATTENDANCE OF WITNESSES.

350. Procedure for obtaining attendance of witnesses.
351. Power to summon material witness or examine person present.
352. When warrant of arrest may issue in first instance.
353. Procedure when warrant cannot be served.
354. Release of attached property of witness appearing and satisfying Court or Magistrate.
Sale of property of witness not appearing or not satisfying Court or Magistrate.
355. Arrest of person disobeying summons.
356. Committal of person refusing to answer.

Inquiries.

357. In inquiries preliminary to commitment.
Power to summon supplementary witnesses.
358. When accused person is to be committed.
359. Refusal to summon unnecessary witness unless deposit made.
360. Recognizances of prosecutors and witnesses.
Detention in custody in case of refusal to attend or to execute recognizance.

Summons Cases.

361. In summons cases.

Warrant Cases.

362. In cases tried upon warrant.

Sessions Trials.

363. Right of accused as to examination and summoning of witness.
364. Procedure in case of witness refusing to answer.

Of Securing Documentary Evidence.

365. Procedure for obtaining production of document required as evidence.
366. When warrant for search for documents may issue.
367. Power to impound document produced.

CHAPTER XXVII.—OF SEARCH-WARRANTS.

368. Search-warrant when grantable.
369. Procedure as to letter in custody of Postal Department.

SECTION.
370. Direction of search-warrant.
371. Warrant to Police officer may be executed by his subordinate.
Endorsement.
372. Execution of search-warrant out of district in which issued.
373. Search-warrants may, in emergency, be executed without endorsement.
Thing found to be taken to Magistrate within whose jurisdiction it is found.
Order thereon.
374. Procedure in such cases within Presidency town.
375. Magistrate may issue search-warrant to be executed in jurisdiction of another Magistrate.
376 Magistrate may send search-warrant by post to Magistrate of another District or Division of District.
Endorsement and execution by such Magistrate.
Direction of warrant to be executed in Presidency town.
377. Search of house suspected to contain stolen property or forged documents.
378. Magistrate may attend personally.
Magistrate may direct search in his presence.
379. Search by officer in charge of Police-station.
380. When officer of Police-station may require another to issue search-warrant.
381. Inspection of weights and measures.
382. Persons in charge of closed house to allow search.
383. Place to be searched may be broken open.
384. Breaking of zanáná.
385. Search to be made in presence of witnesses.
Occupant of place searched may attend.
386. Mode of searching women.
387. Search of arrested persons.

PART IX.

PROCEDURE INCIDENTAL TO INQUIRY AND TRIAL.

CHAPTER XXVIII.—BAIL.

388. When bail shall be taken.
389. Bail not to be taken for certain offences.
When bail may be taken.
390. Power to direct admission to bail.
391. Recognizance of accused and sureties.
392. Insufficient bail.
393. Bail may be taken at any time before conviction.

SECTION.
394. Discharge on bail.
395. Discharge of sureties.
396. Procedure to compel payment of penalty by accused.
397. Procedure to compel payment of penalty by sureties.
398. In what cases the powers given by sections 396 and 397 may be exercised.
Remission of part of penalty.
Revision of orders.
High Court or Court of Session may direct Magistrate to levy sum forfeited.
399. Deposit may be made instead of bail.

CHAPTER XXIX.—FORMATION OF LISTS OF JURORS AND ASSESSORS AND THEIR ATTENDANCE.

400. List of jurors and assessors.
401. Publication of list.
402. Revision of list.
403. Annual revision of list.
404. Jurors and assessors.
405. Disqualifications.
406. Exemptions.
Person exempted is not bound to avail himself of his right of exemption.
407. Court to summon jurors.
408. Summoning and empannelling jurors under section 234.
409. Form and service of summons.
410. Power to summon another set of jurors or assessors.
411. Service of summons on officer of Government.
412. Court may excuse attendance of juror or assessor.
413. List of jurors or assessors attending.
414. Penalty for non-attendance of juror or assessor.

CHAPTER XXX.—MISCELLANEOUS PROVISIONS.

415. Procedure by Police upon seizure of stolen property.
Sale of perishable property.
416. Procedure where owner of property seized unknown.
417. Procedure if no claimant appears within six months.
418. Order for disposal of property regarding which offence committed.
419. Stay of such order.
420. Order may take form of reference to Magistrate of District.
421. Expenses of complainants and witnesses.
422. Interpreter to be bound to interpret truthfully.

Chapter XXXI.—Lunatics.

Section.
423. Procedure in case of accused being lunatic.
424. When accused appears to have been insane.
425. Procedure in case of person committed before a Court of Session being lunatic.
426. Release of lunatic pending investigation or trial.
Custody of lunatic.
427. Resumption of inquiry or trial.
428. Procedure on accused appearing before Magistrate or Court of Session.
429. Finding in case of acquittal on ground of being lunatic.
430. Person so acquitted to be kept in safe custody.
431. Lunatic prisoners to be visited by Inspector General.
432. Procedure where lunatic prisoner is reported capable of making his defence.
433. Procedure where lunatic confined under section 430 is declared capable of being discharged.
434. Delivery of lunatic to care of relative.

Chapter XXXII.—Contempts of Court.

435. Procedure in certain cases of contempt.
436. Procedure where Court considers that accused should be impri
or fined more than 200 rupees.
437. Discharge of offender on submission or apology.
438. Procedure when offender is a European British subject.

PART X.

CHARGE, JUDGMENT AND SENTENCE.

Chapter XXXIII.—Of the charge.

Form of Charges.

439. Charge to state offence.
Specific name of offence, sufficient statement.
How stated where offence has no specific name.
What implied in charges.
Language of charge.
Previous conviction to be set out in charge.
440. Particulars as to time, place and person.
441. When manner of committing offence must be stated.
442. Forms in schedule.
443. Effect of errors.

SECTION.

444. Prisoner may apply for amendment.
445. Court may amend a charge.
446. How Court of Session may deal with charge.
447. When trial may proceed immediately after amendment.
448. When new trial may be directed or trial suspended.
449. Prosecutor and accused person may re-call witnesses.
450. Previous sanction to be obtained if necessary for prosecution of offence in new charge.
451. Effect of material error.

Joinder of Charges.

452. Separate charges for distinct offences.
453. More offences than one of same kind may be charged within a year of each other.
454. I.—Trial of more than one offence.
II.—One offence falling within two definitions.
III.—Acts severally constituting more than one offence, but collectively coming within one definition.
455. Where it is doubtful what offence has been committed.
456. When a person is charged with one offence, he can be convicted of another.
457. When offence proved included in offence charged.
458. What persons may be charged jointly.
459. Withdrawal of remaining charges, on conviction on one of several charges.

Previous Acquittals or Convictions.

460. Person once convicted or acquitted not to be tried for same offence.

CHAPTER XXXIV.—OF THE JUDGMENT, ORDER AND SENTENCE.

461. Judgment to specify offence.
Judgment in the alternative.
462. When judgment is to be pronounced.
463. Judgment to be written in English, or language of district.
Proviso.
464. Judgment what to contain.
Judgment to be translated.

CHAPTER XXXV.—PROSECUTIONS IN CERTAIN CASES.

465. Prosecutions for offences against the State.
466. Prosecution of Judges and public servants.
Sanction when to be given.
Power of Local Government.
467. Prosecution for contempts of the lawful authority of public servants.
468. Prosecution for certain offences against public justice.

SECTION.

469. Prosecution for certain offences relating to documents given in evidence.
470. Nature of sanction necessary.
471. Procedure in cases mentioned in sections 467, 468 and 469.
472. Power of Court of Session as to such offences committed before itself.
473. Contempts of Court.
474. Power of Civil Courts to complete inquiry and commit to Court of Session.
475. Procedure of Civil Court in such cases.
476. Court may bind over persons to give evidence.
477. Procedure where offence triable only by Session Court is committed before Magistrate not empowered to commit to such Court.
478. Prosecution for adultery.
479. Prosecution for enticing away a married woman.

PART XI.

PREVENTIVE JURISDICTION OF MAGISTRATES.

CHAPTER XXXVI.—OF THE DISPERSION OF UNLAWFUL ASSEMBLIES.

480. Assembly to disperse on command of Magistrate or Police officer.
481. Use of force to disperse.
482. Use of military force.
483. When use of military force is not an offence.
484. Duty of officer commanding troops required by Magistrate to disperse assembly.
485. What acts done in obeying requisition not an offence.
486. Acts of inferior officers and soldiers, done in obedience to order, not an offence.
487. Duty of Queen's officers to suppress assembly.
488. Sanction required to prosecutions for acts done under sections 481, 482, 484 and 487.

CHAPTER XXXVII.—OF SECURITY FOR KEEPING THE PEACE.

489. Personal recognizance to keep the peace in cases of conviction.
Where convicting officer is not in charge of Division of District, nor a Magistrate of first class.
490. Security to keep the peace.
491. Summons to any person to show cause why he should not give bond to keep peace.
492. Form of summons.
493. Penalty of bond.
494. Warrant of arrest.
495. Magistrate may dispense with personal attendance of person informed against.

SECTION.
496. Discharge of person informed against.
497. Non-compliance with order to give bond.
498. Time for which person may be bound to keep peace.
Limit of imprisonment under section 497.
499. Extension of time for which person may be bound.
500. Discharge of recognizances.
501. Discharge of sureties.
502. Recovery of penalty from principal.
503. Recovery of penalty from surety.

CHAPTER XXXVIII.—OF SECURITY FOR GOOD BEHAVIOUR.

504. When Magistrate may require security for good behaviour for six months.
Binding of sentenced person.
When Sessions Judge or unauthorized Magistrate thinks a person should be bound.
Powers of Magistrate of Division of District, being a Magistrate of the second class, to inquire.
505. When Magistrate may require security for good behaviour for one year.
506. Procedure where security required for more than one year.
507. Proceedings to be laid before Court of Session.
508. Court of Session may require security for period not exceeding three years.
509. Contents of order for security.
510. Imprisonment in default of security.
Term of imprisonment.
511. Release of prisoners under requisition of security.
512. Report in case of prisoner under requisition of security by order of Court of Session.
513. Discharge of surety.
514. Recovery of penalty from sureties.
515. Issue of summons and warrant of arrest.
Place where proceedings may be held.
Manner of taking evidence under chapter XXXVII or this chapter.
Previous convictions may be proved.
516. Sureties may be rejected on the ground of character.
517. Chapter not applicable to European British subjects.

CHAPTER XXXIX.—LOCAL NUISANCES.

518. Magistrate may issue orders to prevent obstructions, danger to human life, or riots.
519. Magistrate may prohibit repetition or continuance of public nuisances.
520. Orders not judicial proceedings.
521. Magistrate may order removal of nuisances.
Order to be a judicial proceeding.
Order to be in the alternative.

SECTION.

522. Service or notification of order.
523. Person ordered shall obey, or may claim a jury.
Constitution of jury.
Suspension of order.
When order may be made absolute.
Report of jury and order thereon.
524. Attendance of jury.
525. Procedure in case of disobedience or neglect by person ordered.
526. Procedure where jury finds Magistrate's order to be reasonable.
527. Procedure where person ordered satisfies Magistrate that order is not reasonable.
528. Injunction pending inquiry by jury.
529. Saving of certain statutory provisions.

CHAPTER XL.—POSSESSION.

530. Magistrate how to proceed if any dispute concerning land, &c., is likely to cause breach of the peace.
Party in possession to be continued until ousted by due course of law.
531. If previous possession cannot be ascertained, Magistrate may attach subject of dispute.
532. Disputes concerning right of use of land or water.
533. Local inquiry to determine boundary dispute.
534. Power to restore possession of immoveable property.
535. Saving of powers of Collectors and Revenue Courts.

CHAPTER XLI.—OF THE MAINTENANCE OF WIVES AND FAMILIES.

536. Order for maintenance of wives and children.
Enforcement of order.
Proviso.
537. Alteration in allowance.
538. Enforcement of order.

PART XII.

MISCELLANEOUS PROVISIONS.

CHAPTER XLII.—MISCELLANEOUS.

539. Procedure in miscellaneous criminal cases and proceedings.
540. Saving of jurisdiction of Presidency Police Magistrates.
541. Saving of jurisdiction and procedure of landholders, heads of vi lages, village Police officers, Cantonment Magistrates.
SCHEDULE I.—Enactments repealed.
SCHEDULE II.—Forms of summons, warrants, bonds and recogniz
SCHEDULE III.—Forms of charges.
SCHEDULE IV.—Tabular Statement of offences.
SCHEDULE V.—Acts containing references to Criminal Pro

SECTION.

522. Service or notification of order.
523. Person ordered shall obey, or may claim a jury.
Constitution of jury.
Suspension of order.
When order may be made absolute.
Report of jury and order thereon.
524. Attendance of jury.
525. Procedure in case of disobedience or neglect by person ordered.
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ACT No. X OF 1872.[a]

Received the Governor General's assent on the 25th April 1872.

An Act for regulating the Procedure of the Courts of Criminal Judicature.

Preamble.

WHEREAS it is expedient to consolidate and amend the law regulating the Procedure of the Courts of Criminal Judicature, other than the High Courts in Presidency towns in the exercise of their original criminal jurisdiction, and the Courts of Police Magistrates in such towns; It is hereby enacted as follows :—

PART I.

CHAPTER I.—PRELIMINARY, REPEAL, LOCAL EXTENT AND DEFINITIONS.

Short title.

1. This Act may be called "The Code of Criminal Procedure :"

Local extent.

It extends to the whole of British India,[b] but shall not, except as hereinafter provided, affect the procedure of the High Courts[c] or Police Magistrates in Presidency towns.

Repeal of enactments.

2. The enactments mentioned in the first schedule hereto annexed are repealed to the extent specified in the third column of the said schedule.

Saving of special procedure.

Wherever a special form of procedure is prescribed by any law[d] not expressly repealed in the first schedule to this Act, it shall not be deemed to have been impliedly repealed by reason of its being inconsistent with the provisions of this Code.[e]

[illegible]ery Act passed before this Act, in which reference is made to the [illegible] Procedure, such reference shall be taken to be made to this Act.

[illegible]sed before this Act, the expressions "Officer exercising [illegible]istrate," "Subordinate Magistrate, First Class," and [illegible] "Subordi[illegible]tive[illegible]ned [illegible]gistrate, Second Class," shall, respectively, be deemed to [illegible]trate of the First Class," "Magistrate of the Second Class," [illegible]gistrate of the Third Class," as defined in this Act.

[illegible]he cases in which the Police may arrest without warrant or not, in the [illegible] of each offence under the Indian Penal Code or any other law referred to [illegible] section eight;

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a See Act No. XI of 1874.

b It has also been applied to Mysore, the Haidarábád Assigned Districts and the Cantonment [illegible]ndarábád.

[illegible] to this, see Act No. X of 1875.

[illegible] Act No. V of 1869.

[illegible]ad. High Court Rulings, XXXIII.

[illegible]I of 1874, section 1.

"Presidency Town."

"Presidency Town" means the local limits of the ordinary original civil jurisdiction of the High Courts of Calcutta, Madras or Bombay:

"High Court."

"High Court" means, in reference to proceedings against European British subjects,[a] or persons jointly charged with European British subjects, the High Courts of Calcutta, Madras, Bombay, the High Court for the North-Western Provinces, and the Chief Court of the Panjáb:

In other cases "High Court" means the highest Court of criminal appeal or revision in any province:

"Session case."

"Session case" means and includes all cases specified in column seven of the fourth schedule to this Act as cases triable[b] by a Court of Session, and all cases which Magistrates commit to a Court of Session, although they might have tried them themselves.

In the case of offences created by special and local laws, "Session case" means cases which are triable by the Court of Session, or which the Magistrate commits to the Court of Session, though he might have tried them himself:

"Magistrate's case."

"Magistrate's case"[c] means and includes all cases specified in column seven of the fourth schedule to this Act as cases triable by Magistrates, and all cases which Magistrates try themselves, although they might have committed them for trial to a Court of Session:

"Cognizable offence or case."

"Cognizable offence or case" means an offence for, or a case in, which a Police officer may, by any law in force for the time being, arrest without warrant:

"Non-cognizable offence or case."

"Non-cognizable offence or case" means an offence for, or a case in, which a Police officer may not arrest without warrant:

"Summons case."

"Summons case" means an offence of the class described in section one hundred and forty-eight:

"Warrant case."

"Warrant case" means an offence of the class described in section one hundred and forty-nine:

"Bailable offence or case."

"Bailable offence or case" means an offence for, or a case in, which bail may be taken under the fourth schedule to this Act, or by any other law in force for the time being:

"Non-bailable offence or case."

"Non-bailable offence or case" means an offence for, or a case in, which bail may not be taken under the fourth schedule to this Act, or by any law in force for the time being.

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[a] See section 71 *infra*.

[b] Whether exclusively or not, *Reg.* v. *Gulábdás Kuberdás*, 11 Bomb. 98. Contra, *The Queen* v. *Seetul Pershad*, 5 N.-W. P. 168.

[c] See section 74 *infra*.

[a]In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

PART II.

CONSTITUTION AND POWERS OF THE CRIMINAL COURTS.

CHAPTER II.—Of Criminal Courts.

5. Besides the High Courts, there shall be four grades of Criminal Courts in British India— Grades of Criminal Courts.

I.—The Court of the Magistrate of the Third Class:

II.—The Court of the Magistrate of the Second Class:

III.—The Court of the Magistrate of the First Class:

IV.—The Court of Session.

6. All inquiries by Magistrates shall be held according to the provisions hereinafter contained. Inquiries by Magistrates.

7. All criminal trials in British India shall be held before the Courts specified in the fourth schedule to this Act, or before the Courts specified in any law by which the offence is created, according to the provisions hereinafter contained. What Courts to try offences.

8. Offences punishable under any law, other than the Indian Penal Code, containing no distinct provision as to the Court or officer before which or before whom they are to be tried, may be inquired into and tried, according to the provisions hereinafter contained, by the Criminal Courts appointed under this Act. But no such Court shall award any sentence in excess of its powers. Offences under local and special laws.

A Magistrate of the Third Class shall not try any such offence unless it is punishable with less than one year's imprisonment, nor shall a Magistrate of the Second Class try any such offence unless it is punishable with less than three years' imprisonment.

9. All Judges of Criminal Courts, other than the High Courts, and Magistrates shall be appointed and may be removed by the Local Government; but such officers as are now appointed or removed by the Government of India shall continue to be so appointed or removed. Appointment and removal of Judges and Magistrates.

10. All existing Judges and Magistrates shall be deemed to have been appointed under this Act. Saving of existing incumbents.

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[a] Act No. XI of 1874, section 2. See sections 66 and 67 *infra*.

Inquiry and trial in case of European British subjects.

11. Offences committed by European British subjects[a] shall be inquired into and tried according to the provisions of chapter VII and not otherwise; but the other provisions of this Act shall apply to all persons without distinction of race, unless a contrary intention is expressed.

CHAPTER III.—Of Courts of Session.

Sessions Divisions.

12. Every province shall be divided into Sessions Divisions.

Power to alter Divisions.

13. The Local Government shall have power to alter, from time to time, the number or extent of such Divisions.

Existing local jurisdictions of Courts of Session to be Sessions Divisions.

14. The existing local jurisdictions of Courts of Session shall be Sessions Divisions, unless and until they are so altered.

One Court for each Division.

15. There shall be a Court of Session in every Sessions Division:

It shall have power to try any offence and to pass upon any offender any sentence authorized by law, subject to the provisions of this Act.

Appointment and powers of Sessions Judges.

16. There shall be a Sessions Judge for every Sessions Division. The Sessions Judge shall exercise all the powers of the Court of Session in his Sessions Division.

Appointment and powers of Additional and Joint Sessions Judges.

17. The Local Government may appoint Additional Sessions Judges or Joint Sessions Judges, who shall exercise all the powers of a Court of Session in one or more Sessions Divisions in which they may be directed to act, but shall try such cases only as the Local Government directs them to try, or as the Sessions Judge of the Division makes over to them for trial.

Appointment and powers of Assistant Sessions Judges.

18. The Local Government may also appoint Assistant Sessions Judges, who shall exercise all the powers of a Court of Session in the Sessions Division to which they may be attached, except the power of hearing appeals, and of passing sentences of death, or transportation, or imprisonment for more than seven years; but they shall try those cases only which the Sessions Judge of the Sessions Division makes over to them either by general orders or by a special order:

Any sentence of more than three years' imprisonment passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge. The Sessions Judge may either confirm, modify or annul such sentence of the Assistant Sessions Judge, [b]or if he think further enquiry or additional evidence upon any point bearing upon the guilt or innocence of the

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[a] See section 71.

[b] Act No. XI of 1874, section 3

accused person to be necessary, he may direct such enquiry or evidence to be made or taken.

CHAPTER IV.—Of Magistrates and their Powers.

Magistrates to be of three classes.

19. Magistrates shall be either—

Magistrates of the First Class,[a]

Magistrates of the Second Class, or

Magistrates of the Third Class.

Sentences which Magistrates may pass.

20. The powers of Magistrates in respect to the trial of offences and to passing sentences on persons convicted of them are as follows:—

Powers of Magistrates, First Class.

Magistrates of the First Class may pass the following sentences:—

Imprisonment not exceeding the term of two years (including such solitary confinement as is authorized by law [b]);

Fine to the extent of one thousand rupees;[c]

Whipping.[d]

Powers of Magistrates, Second Class.

Magistrates of the Second Class may pass the following sentences:—

Imprisonment not exceeding six months (including such solitary confinement as is authorized by law [b]);

Fine not exceeding two hundred rupees;[c]

Whipping.[d]

Powers of Magistrates, Third Class.

Magistrates of the Third Class may pass the following sentences:—

Imprisonment not exceeding one month;

Fine not exceeding fifty rupees.

A Magistrate of the Third Class may not pass a sentence of solitary confinement, or of whipping.

Any Magistrate may pass any lawful sentence, combining any of the sentences which he is authorized by law to pass.

Explanation.—A Magistrate may award imprisonment in default of payment of fine, in addition to the full term of imprisonment which, under this section, he is competent to award.

Powers conferred upon Magistrates.

21. In addition to the powers given in section twenty, the following powers are conferred, as hereinafter provided, upon Magistrates by this Act:—

(1.) Power to make over cases to a Subordinate Magistrate (s. 44).

(2.) Power to pass a sentence on proceedings recorded by a Subordinate Magistrate (s. 46).

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a As to Magistrates of Districts, see sec. 35.
b See Act No. XLV of 1860, sections 73, 74.
c See sec. 309 *infra*.
d See Act No. VI of 1864.

(3.) Power to withdraw cases and to try or refer them for trial (s. 47).
(4.) Power to withdraw or refer appeals from convictions by Magistrates of the Second and Third Classes (s. 47).
(5.) Power to arrest an accused person found in Court (s. 104).
(6.) Power to order the Police to investigate an offence (s. 110).
(7.) Power to record confessions or statements during a Police investigation (s. 122).
(8.) Power to authorize detention of a person during a Police investigation (s. 124).
(9.) Power to hold an inquest (s. 135).
(10.) Power to entertain complaints and receive Police reports (s. 141).
(11.) Power to entertain cases without complaint (s. 142).
(12.) Power to commit for trial (s. 143).
(13.) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction (s. 157).
(14.) Power to direct warrant to landholder (s. 162).
(15.) Power to arrest offender in presence of Magistrate (s. 166).
(16.) Power to endorse warrant, or to order the removal of an accused person arrested under a warrant (ss. 168 and 170).
(17.) Power to issue proclamation in cases judicially before him (ss. 171 and 353).
(18.) Power to attach and sell property in cases judicially before him (ss. 172 and 354).
(19.) Power to try summarily (s. 222).
(20.) Power to hear appeals from convictions by Magistrates of the Second and Third Classes (s. 266).
(21.) Power to call for proceedings (ss. 295 and 296).
(22.) Power to quash convictions in certain cases (s. 328).
(23.) Power to issue a search-warrant for letter in Post Office (s. 369).
(24.) Power to endorse a search-warrant and order delivery of thing found (ss. 372, 373 and 376).
(25.) Power to issue search-warrant otherwise than in the course of an inquiry (s. 377).
(26.) Power to revise bail orders (s. 398).
(27.) Power to sell perishable property of a suspicious character (s. 415).
(28.) Power to sell suspicious or stolen property (s. 417).
(29.) Power to demand security to keep the peace (s. 491).
(30.) Power to discharge recognizances to keep the peace (s. 500).
(31.) Power to demand security for good behaviour (ss. 504 and 505).

(32.) Power to discharge person bound to be of good behaviour (s. 511).

(33.) Power to issue order to prevent obstruction, &c. (s. 518).

(34.) Power to issue order prohibiting repetition of nuisance (s. 519).

(35.) Power to make orders, &c., in local nuisance cases (s. 521).

(36.) Power to make orders, &c., in possession cases (s. 530).

(37.) Power to make orders of maintenance (s. 536).

Powers common to all Magistrates.

22. Magistrates of all classes shall, as such, have the following powers :—

(1.) Power to arrest an accused person found in Court (s. 104).

(2.) Power to record confessions or statements during a Police investigation (s. 122).

(3.) Power to authorize detention of a person during a Police investigation (s. 124).

(4.) Power to arrest offender in the presence of Magistrate (s. 166).

(5.) Power to endorse warrant, or to order the removal of an accused person arrested under a warrant (ss. 168 and 170).

(6.) Power to issue proclamation in cases judicially before him (ss. 171 and 353).

(7.) Power to attach and sell property in cases judicially before him (ss. 172 and 354).

(8.) Power to endorse a search-warrant and order delivery of thing found (ss. 372, 373 and 376).

(9.) Power to sell perishable property of a suspicious character (s. 415).

Powers which Local Government and Magistrate of the District may confer on Magistrates of the Third Class.

23. In addition to the powers mentioned in section twenty-two, a Magistrate of the Third Class may be invested with the following powers :—

(*a*.) By the Local Government—

(1.) Power to hold inquests (s. 135).

(2.) Power to entertain complaints of offences in cases in which he has jurisdiction to try or to commit for trial (s. 141).

(3.) Power to commit for trial (s. 143).

(4.) Power to issue order to prevent obstruction, &c. (s. 518).

(5.) Power to issue order prohibiting repetition of nuisance (s. 519).

(*b*.) By the Magistrate of the District—

(1.) Power to hold inquests (s. 135).

(2.) Power to entertain complaints of offences in cases in which he has jurisdiction to try or to commit for trial (s. 141).

(3.) Power to issue order to prevent obstruction, &c. (s. 518).

(4.) Power to issue order prohibiting repetition of nuisance (s. 519).

Powers of Magistrates of the Second Class.

24. Magistrates of the Second Class shall, as such, in addition to the powers mentioned in section twenty-two, have the following power :—

(1.) Power to order the Police to investigate an offence in which the Magistrate has jurisdiction to try or to commit for trial (s. 110).

Powers which may be conferred on Magistrates of the Second Class.

25. In addition to the powers given and referred to in section twenty-four, a Magistrate of the Second Class may be invested with the following powers :—

(*a.*) By the Local Government—

(1.) Power to hold inquests (s. 135).

(2.) Power to entertain complaints and receive Police reports in cases in which he has jurisdiction to try or to commit for trial (s. 141).

(3.) Power to entertain without complaint cases which he has jurisdiction to try or to commit for trial (s. 142).

(4.) Power to commit for trial (s. 143).

(5.) Power to issue order to prevent obstruction, &c. (s. 518).

(6.) Power to issue order prohibiting repetition of nuisance (s. 519).

(*b.*) By the Magistrate of the District—

(1.) Power to hold inquests (s. 135).

(2.) Power to entertain complaints and receive Police reports in cases in which he has jurisdiction to try or to commit for trial (s. 141).

(3.) Power to issue order to prevent obstruction, &c. (s. 518).

(4.) Power to issue order prohibiting repetition of nuisance (s. 519).

Powers of Magistrates of the First Class.

26. Magistrates of the First Class shall, as such, in addition to the powers mentioned in sections twenty-two and twenty-four, have the following powers :—

(1.) Power to commit for trial (s. 143).

(2.) Power to issue search-warrant otherwise than in the course of an inquiry (s. 377).

(3.) Power to demand security to keep the peace (s. 491).

(4.) Power to demand security for good behaviour (ss. 504 and 505).

(5.) Power to make orders, &c., in possession cases (s. 530).

(6.) Power to make orders of maintenance (s. 536).

Powers which may be conferred on Magistrates of the First Class.

27. In addition to the powers given and referred to in section twenty-six, a Magistrate of the First Class may be invested with the following powers :—

(*a.*) By the Local Government—

(1.) Power to make over cases taken up on complaint, &c., to a Subordinate Magistrate (s. 44).

(2.) Power to hold inquests (s. 135).

(3.) Power to entertain complaints of offences, and receive Police reports (s. 141).

(4.) Power to entertain cases without complaint (s. 142).

(5.) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction (s. 157).

(6.) Power to try summarily (s. 222).

(7.) Power to hear appeals from convictions by Magistrates of the Second and Third Classes (s. 266).

(8.) Power to sell suspicious or stolen property (s. 417).

(9.) Power to issue order to prevent obstruction, &c. (s. 518).

(10.) Power to issue order prohibiting repetition of nuisance, &c. (s. 519).

(11.) Power to make orders, &c., in local nuisance cases (s. 521).

(*b*.) By the Magistrate of the District—

(1.) Power to hold inquests (s. 135).

(2.) Power to entertain complaints of offences, and receive Police reports (s. 141).

(3.) Power to issue order to prevent obstruction, &c. (s. 518).

(4.) Power to issue order prohibiting repetition of nuisance (s. 519).

Powers of Magistrates of Divisions of Districts.

28. Magistrates who, under the provisions of section forty, are Magistrates of Divisions of Districts shall, as such, have all the powers given to Magistrates of the First Class, and referred to in section twenty-six, and, in addition, shall have the following powers:—

(1.) Power to make over cases to a Subordinate Magistrate (s. 44).

(2.) Power to pass sentence on proceedings recorded by a Subordinate Magistrate (s. 46).

(3.) Power to withdraw cases, but not appeals, and to try or refer them for trial (s. 47).

(4.) Power to hold inquests (s. 135).

(5.) Power to entertain complaints of offences, and receive Police reports (s. 141).

(6.) Power to entertain cases without complaint (s. 142).

(7.) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction (s. 157).

(8.) Power to sell suspicious or stolen property (s. 417).

(9.) Power to issue order to prevent obstruction, &c. (s. 518).

(10.) Power to issue order prohibiting repetition of nuisance (s. 519).

(11.) Power to make orders in local nuisance cases (s. 521).

Provided that, if a Magistrate of a Division of a District exercise the powers of a Magistrate of the Second Class, he shall not have power to demand security to be of good behaviour.

Powers which Local Government may confer on Magistrates of Divisions of Districts.

29. In addition to the powers given and referred to in section twenty-eight, the Local Government may confer on a Magistrate of a Division of a District, exercising the powers of a Magistrate of the First Class, the following powers :—

(1.) Power to try summarily (s. 222).

(2.) Power to hear appeals from convictions by Magistrates of the Second and Third Classes (s. 266).

Powers of Magistrates of Districts.

30. Magistrates of Districts may, as such, exercise all the powers mentioned in section twenty-one.

Saving of other powers.

31. All other powers given by this Act or by any other law in force may be exercised by the officers or Courts to whom or to which they are given.

Irregularities which do not vitiate proceedings.

32. If any Magistrate, not being empowered by law in that behalf, does any one of the following things :—

(1.) If he makes over a case, taken up on complaint, &c., to another Magistrate,

(2.) If he withdraws a case and tries it himself, or refers a case for trial,

(3.) If he orders the Police to investigate an offence,

(4.) If he holds an inquest,

(5.) If he entertains a complaint or receives a Police report,

(6.) If he issues process for the apprehension of a person within his local jurisdiction who has committed an offence outside his local jurisdiction,

(7.) If he issues a search-warrant otherwise than in the course of an inquiry,[a]

his proceedings shall not be set aside on the ground that he was not so empowered.

When irregular commitments may be validated.

33. If any Magistrate, not being empowered by law,[b] commits an accused person to take his trial before a Court of Session or High Court, the Court to which the commitment was made may, after perusal of the proceedings, accept the commitment if it considers that the accused person has not been prejudiced, unless the accused person has objected to the jurisdiction of the committing Magistrate during the inquiry and before the order of commitment.

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[a] See *infra* secs. 44, 47, 110, 135, 141, 167, 377.

[b] See *infra* secs. 72, 75 and 143.

If such Court considers that the accused person was prejudiced, or if he objected to the jurisdiction of the committing Magistrate during the inquiry and before the order of commitment, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

Irregularities which render proceedings void.

34. If any Magistrate, not being empowered by law in that behalf,[a] does any of the following things, his proceedings shall be void; that is to say:—

(1.) If he passes a sentence on proceedings recorded by another Magistrate,

(2.) If he entertains a case without complaint,

(3.) If he attaches and sells property under section one hundred and seventy-two,

(4.) If he tries an offender summarily,

(5.) If he decides an appeal,

(6.) If he calls for proceedings,

(7.) If he issues a search-warrant for a letter in the Post Office,

(8.) If he revises a bail order,

(9.) If he sells suspicious or stolen property under section four hundred and seventeen,

(10.) If he demands security to keep the peace,

(11.) If he discharges recognizances to keep the peace,

(12.) If he demands security for good behaviour,

(13.) If he discharges a person lawfully bound to be of good behaviour,

(14.) If he makes an order in a local nuisance case,

(15.) If he issues an order to prevent an obstruction,

(16.) If he prohibits the repetition of a nuisance,

(17.) If he makes an order in a possession case, or

(18.) If he makes an order for maintenance.[b]

The Magistrate of the District.

Magistrate of the District.

35. In every district there shall be a Magistrate of the First Class appointed by the Local Government, who shall be called the Magistrate of the District, and shall exercise throughout his district[c] all the powers of a Magistrate.

Powers with which Deputy Commissioners and chief executive officers of District may be invested.

36. In the territories subject to the Lieutenant-Governor of the Panjáb, and in the territories administered by the Chief Commissioners of Oudh, the Central Provinces and British Burma, in Coorg, and in those parts of the

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a 22 Suth. W. R. Crim. Rulings, 43.

b See *infra* secs. 45, 142, 172, 222, 266, 278, 369, 398, 417, 491, 500, 504, 505, 511, 519, 521, 528, 530, 536.

c See *infra* sec. 38.

other provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may invest the Deputy Commissioner, or other chief officer charged with the executive administration of the district in criminal matters, with power to try as a Magistrate all offences not punishable with death, and to pass sentence of imprisonment for a term not exceeding seven years,[a] including such solitary confinement as is authorized by law, or of fine, or of whipping, or any combination of these punishments authorized by law; but any sentence of upwards of three years' imprisonment passed by any such officer shall be subject to the confirmation of the Sessions Judge to whom such Deputy Commissioner is subordinate.[b] Such Sessions Judge may either confirm, modify or annul any sentence referred for confirmation,[c] or if he think further enquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused person to be necessary, he may direct such enquiry or evidence to be made or taken.

Subordinate Magistrates.

Subordinate Magistrates.

37. The Local Government may appoint as many other persons, besides the Magistrate of the District, as it thinks fit, to be Magistrates of the First, Second or Third Class in the district.

All such Magistrates shall be subordinate to the Magistrate of the District, but neither the Magistrate of the District nor the Subordinate Magistrates shall be subordinate to the Sessions Judge, except to the extent and in the manner provided by this Act.[d]

Proviso.

The Local Government shall not have power to direct that any Magistrate may try any offence which Magistrates of his class are not authorized to try, or pass any sentence which Magistrates of his class are not authorized to pass by section twenty.

Power to determine local jurisdiction of a Magistrate of District.

38. The Local Government may, by notification in the official Gazette, prescribe the local limits of the jurisdiction of a Magistrate of the District, and may, by such notification, from time to time alter such local limits.

Division of districts into divisions.

Existing divisions preserved.

39. The Local Government may divide any district into divisions, and from time to time alter their limits,[e] and may, with the previous sanction of the Governor General in Council, declare any local area to be a district. All existing divisions of districts, which are now usually put under the charge of a Magistrate, shall be divisions until their limits are so altered.

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[a] See Act No. XLV of 1860, s. 59.
[b] See *Calcutta Gazette*, 1873, p. 67.
N. W. P. Gazette, 1873, p. 3.
Oudh Gazette, 1873, p. 1.
[c] Act No. XI of 1874, section 3.
[d] See *infra* secs. 269, 295, 296, 298.
[e] Act No. XI of 1874, section 4.

40. The Local Government may place any Magistrate of the First or Second Class in charge of a division of a district.

Local Government may put Magistrate in charge of division.

Such Magistrate shall be called a Magistrate of a Division of a District, and shall exercise the powers conferred on him under this Act,[a] or under any law for the time being in force, subject to the control of the Magistrate of the District.

The Local Government may, if it thinks fit, delegate its powers under this section to the Magistrate of the District.[b]

Delegation of power to Magistrate of District.

41. Every Magistrate in a division of a district shall be subordinate to the Magistrate of the Division of the District, subject, however, to the general control of the Magistrate of the District.

Subordination of officers to Magistrate of Division of District.

42. The Local Government may confer upon any person all or any of the powers of a Magistrate of the First, Second or Third Class, in respect to particular offences, or to a particular class or particular classes of offences, or in regard to offences generally, in any part of a district, or in any one or more districts, subject to such Local Government.

"Special Magistrates."

Such Magistrates shall be called "Special Magistrates."

[c] With the previous sanction of the Governor General in Council, the Local Government may delegate, with such limitations as it may think proper, to any officer under its control, the power conferred by the first clause of this section.

43. In conferring powers under this Act, the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

Mode of conferring powers.

44. The Magistrate of the District, or any Magistrate of a Division of a District, may make over any[d] case taken up by him on suspicion, or brought before him on complaint or on report by the Police, for inquiry or trial to any Magistrate subordinate to him, to be dealt with to the extent of the powers with which the Subordinate Magistrate may have been invested under the provisions hereinbefore contained.[e]

Transfer of cases to Subordinate Magistrate.

The Magistrate making the reference may, if the case was brought forward on complaint, before such reference, examine the complainant as prescribed in this Act[f]; but if he does not do so, the Magistrate to whom the case is referred shall proceed as if the complaint had been made to him.

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[a] See sec 28 *supra.*

[b] See *Fort St. George Gazette,* 1873, p. 717: *Bombay Government Gazette,* 1873, p. 473: and *Calcutta Gazette,* 1873, p. 236.

[c] Act No. XI of 1874, section 5.

[d] including cases under Part XI.

[e] See *Calcutta Gazette,* 1873, p. 63: *Fort St. George Gazette,* 1873, p. 717: *N.-W. Provinces Gazette,* 1873, p. 903.

[f] See sec. 144 *infra.*

The order of reference shall be recorded in a proceeding, and, if the case has been brought forward on the report of a Police officer, shall be recorded on such report; and all processes issued for causing the attendance of the accused person or the witnesses shall direct them to attend before the Magistrate to whom the case has been referred.

The Magistrate making the reference may, if he thinks proper, retransfer to his own file the case referred under paragraph one of this section, and when he has done so, and not before, may proceed therein.

Procedure of Magistrate in cases beyond his jurisdiction.

45. If, in the course of a proceeding before a Magistrate, the evidence appears to him to warrant a presumption that the accused person has been guilty of an offence which such Magistrate is not competent to try,

or for which he is not competent to commit the accused person for trial,

he shall stay proceedings and submit the case to any Magistrate to whom he is subordinate,[a] or to such other Magistrate, having jurisdiction, as the Magistrate of the District directs.

The Magistrate to whom the case is submitted shall either try the case himself, or refer it to any officer subordinate to him, having jurisdiction; or he may commit the accused person for trial.

In any such case, such Magistrate or other officer as aforesaid shall examine the parties and witnesses, and shall proceed in all respects as if no proceedings had been held in any other Court.

But any statement or confession duly made by an accused person, in the course of the proceedings before the Magistrate before whom the case was originally brought, shall be admissible as evidence in all subsequent proceedings.

Procedure when Magistrate cannot pass sentence sufficiently severe.

46. Whenever a Magistrate of the Second or Third Class, having jurisdiction, finds an accused person guilty, and considers that he ought to receive a more severe punishment than such Magistrate is competent to adjudge, he may record the finding and, if sentence has not been passed, may submit his proceedings, and forward the accused person, to the Magistrate of the District, or to the Magistrate of the Division of the District, to whom he is subordinate.

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties, and recall and examine any witness who has already given evidence in the case; and may summon any further witnesses and take their evidence; and shall pass such judgment, sentence or order in the case as he deems proper, and as is according to law: Provided that he shall not exceed the powers ordinarily exercisable by him under section twenty of this Act.

Magistrate may, in the first instance,

The Magistrate who originally dealt with the case may, if he is empowered to hold inquiries into cases triable by the Court of Session and to commit

[a] See secs. 37 and 41 *supra*.

persons to take their trial before such Court, instead of submitting his proceedings to another Magistrate, commit the accused person for trial before the Court of Session instead of finding him guilty.

commit accused for trial before Court of Session.

[a] *Illustration.*

A Magistrate of the Third Class, having jurisdiction, finds an accused person guilty, but considers that he ought to receive a more severe punishment than imprisonment for a term of one month, or a fine of fifty rupees. On recording the finding, submitting the proceedings and forwarding the accused to the Magistrate of the District, such Magistrate may pass a sentence on the accused including solitary confinement and whipping.

47. Magistrates of Districts and Magistrates of Divisions of Districts may respectively withdraw any [b] case from any Magistrate subordinate to them, and may inquire into or try the case themselves, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Magistrate may withdraw or refer cases.

Magistrates of Districts may withdraw any criminal appeal from any Subordinate Magistrate who has been authorized to hear appeals from the convictions of Magistrates of the Second and Third Classes, and may refer criminal appeals to any competent Magistrate subordinate to them.

48. The Local Government may authorize the Magistrate of the District to withdraw from the Magistrates subordinate to him, whether in charge of divisions of districts or not, either such classes of cases as he thinks proper, or particular classes of cases.[c]

Local Government may empower Magistrates of Districts to withdraw classes of cases.

49. The Magistrate of the District, under the general or special orders of the Local Government,[d] may authorize any Magistrate subordinate to him to entertain complaints arising within certain local limits, and may from time to time vary such orders: Provided that no such Magistrate shall be authorized to entertain any complaint of any offence which he is not competent to try or to commit for trial.

Local Government may authorize Magistrate of District to distribute business by localities.

Magistrates' Benches.

50. The Local Government may direct any two or more Magistrates to sit together as a bench, and may invest such bench with the powers of a Magistrate of the First, Second or Third Class, and direct it to try such cases, or such classes of cases, only, and within such limits, as it thinks fit.[e]

Power to invest Magistrates sitting as a bench with certain powers.

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[a] Act No. XI of 1874, section 7.

[b] including cases under Part XI.

[c] See *Calcutta Gazette*, 1873, p. 67: *N. W. Provinces Gazette*, 1873, p. 3: *Panjáb Gazette*, 1873, p. 75: *Oudh Gazette*, 1873, p. 2: *British Burma Gazette*, Part II, p. 5.

[d] See *Calcutta Gazette*, 1873, p. 66: *Fort St. George Gazette*, 1873, p. 717: *N. W. Provinces Gazette*, 1873, p. 3: *Panjáb Gazette*, 1873, p. 75: *Oudh Gazette*, 1873, p. 2: *Central Provinces Gazette*, 1873, Part 1 A., p. 18.

[e] See *Calcutta Gazette*, 1873, pp. 17 and 662. *N. W. Provinces Gazette*, 1874, p. 1175.

Powers exercisable by such bench in absence of special directions.

51. In the absence of any special direction as to the powers of any such bench, it shall have the powers of a Magistrate of the highest class to which any one of its members belongs, and who is present taking part in the proceedings.

Magistrate of the District may frame rules for guidance of benches.

52. The Magistrate of the District may, subject to the general orders of the Local Government, make rules for the guidance of Magistrates' benches in his district.

Such rules shall not be inconsistent with the provisions of this Act, and may deal with the following subjects :—

The classes of cases to be tried ;

The times and places of sitting ;

The constitution of the bench for conducting trials ;

The mode of settling differences of opinion which may arise between the Magistrates in Session.

Magistrate of District may vary or annul rules made under section 52.

53. The Magistrate of the District may, subject to the like orders, vary or annul, from time to time, any rules made by himself or by his predecessor under the last preceding section.

Continuance and Alteration of Powers.

Powers may be varied or cancelled.

54. The Local Government may vary or cancel any powers with which any person may have been invested under this Act or any enactment hereby repealed.

Powers of officers temporarily succeeding to vacancies in office of Magistrate of District.

55. When, in consequence of the office of a Magistrate of the District becoming vacant, any officer succeeds temporarily to the chief executive administration of the district in criminal matters, such officer shall, pending the orders of the Local Government, exercise all the ordinary powers, and perform all the duties, of the Magistrate of the District.

Continuance of powers of officers transferred.

56. Whenever any person holding an office in the service of Government, who has been invested with any powers, under this Act or any enactment hereby repealed, in any district, is transferred to an equal or higher office of the same nature within another district, he shall, unless the Local Government otherwise directs, continue to exercise the same powers in the district to which he is so transferred.

CHAPTER V.—Of Public Prosecutors.

Appointment of public prosecutor.

57. The Local Government may, if it thinks proper, appoint officers to be called public prosecutors.

Appointment may be for particular case or generally.

58. Public prosecutors may be appointed either for a particular case, or for particular classes of cases, or for all cases throughout the whole or any part of any province.

59. Any Court [a] inferior to a Court of Session [b] inquiring into or trying any case may permit any person to conduct the case as prosecutor; but no person shall be entitled to do so without such permission. Any person permitted to prosecute may conduct the prosecution personally or by counsel.

Private persons may not act as prosecutors or employ counsel without permission of the Court.

60. The public prosecutor may appear and plead, without any written authority, before all Courts in which any case under his charge is under inquiry, trial or appeal; and if any private person instructs any barrister, attorney, pleader or vakíl to prosecute any person in any case under the charge of the public prosecutor, the public prosecutor shall have the management of the case, and such other person shall act under his directions.

He may plead in all Courts in cases under his charge. Barristers, &c., privately instructed, to be under his direction.

61. The public prosecutor may, with the consent of the Court, withdraw any charge against any person in any case of which he is in charge; and upon such withdrawal, if it is made whilst the case is under inquiry, the accused person shall be discharged. If it is made when he is under trial, the accused person shall be acquitted.

Effect of withdrawal of charge by public prosecutor.

62. If an appeal is brought in any case in which any person prosecuted by the public prosecutor has been convicted, notice of such appeal and a copy of the grounds of appeal shall be given to such public prosecutor by the Appellate Court, and the Court shall also give him due notice of the time and place at which such appeal is to be heard.

Notice to public prosecutor of appeal in cases prosecuted by him.

CHAPTER VI.—The Place of Inquiry and Trial.

63. Every offence shall be inquired into, [c] and, if tried by a Magistrate, shall be tried in the district in which it was committed. If tried by a Court of Session, it shall be tried by that Court of Session to which the Magistrate commits.

Place for inquiry and trial of offence.

Magistrates shall ordinarily commit to the Court of Session for the Sessions Division in which the district to which they are appointed is situated; but the Local Government may direct that any cases or class of cases committed in any district may be tried in any Sessions Division:

[d] Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, cap. 104, section fifteen, or under section sixty-four of this Code.

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a Act No. XI of 1874, section 8.
b As to the conduct of prosecutions in Courts of Session, see sec. 235 *infra*.
c See definition, sec. 4 *supra*.
d Act No. XI of 1874, section 9.

EXPLANATION.—Offences created by local and special laws may be inquired into and tried in any place where the inquiry or trial might be held under the provisions of those laws or of this Code.

High Court may transfer case, or direct trial in district other than that in which offence was committed.

64. Whenever it appears to the High Court that such order will promote the ends of justice, or tend to the general convenience of the parties or witnesses, it may direct the transfer of any particular criminal case or appeal, or class of cases or appeals, from a Criminal Court subordinate to its authority, to any other such Criminal Court of equal or superior jurisdiction,

or may order that any offence shall be inquired into or tried in any district or division of a district, other than that in which the offence has been committed, or that it shall be tried before itself.

If the High Court withdraws any case from any other Court for trial before itself, it shall observe the same procedure which that Court would have observed if the case had not been so withdrawn.[a]

Power to transfer criminal cases and appeals.

[b] **64A.** Whenever it appears to the Governor General in Council that it will promote the ends of justice or tend to the general convenience of parties or witnesses, he may, by notification in the *Gazette of India,* direct the transfer of any particular criminal case or appeal from one High Court [c] to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court.

And the Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in or presented to such Court.

Accused triable in district where act is done, or where consequence ensues.

65. When a person is accused of the commission of any offence by reason of anything which has been done, or of anything which has been omitted to be done, and of any consequence which has ensued, such offence may be inquired into or tried in any district in which any such thing has been done, or omitted to be done, or any such consequence has ensued.

Illustrations.

(*a.*) A is wounded in the district of X and dies in district Z. The offence of the culpable homicide of A may be inquired into and tried either in X or Z.

(*b.*) A is wounded in the district of X, and is, during twenty days, unable to follow his ordinary pursuits in the district Y, where he is being treated. The offence of causing grievous hurt to A may be inquired into and tried either in X or Y.

(*c.*) A is put in fear of injury in district X, and is thereby induced, in the district of Y, to deliver property to the person who put him in fear. The offence

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[a] But now see Act No X of 1875, section 32.
[b] Act No. XI of 1874 section 11.
[c] This includes the Court of the Recorder of Rangoon, Act No. XVII of 1875, sec. 60.

of extortion committed on A may be inquired into and tried either in district X or district Y.

66. When an act[a] is an offence by reason of its relation to any other act which is also an offence, a charge of the first mentioned offence may be inquired into and tried, either in the district in which it happened, or in the district in which the offence with which it was so connected happened.

Place for trial where act is offence by reason of relation to other offence.

Illustrations.

(*a.*) A charge of abetment may be inquired into and tried, either in the district in which the abetment was committed, or in the district in which the offence abetted was committed.

(*b.*) A charge of receiving or retaining stolen goods may be inquired into and tried, either in the district in which the goods were stolen, or in any district in which any of them were at any time dishonestly received or retained.

(*c.*) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into and tried in the district in which the wrongful concealing or in the district in which the kidnapping took place.

(*d.*) A, B, C and others combine together to abet the waging of war against the Queen. Any of the conspirators may be tried in any district in which acts were done by any one of the persons with whom he or they conspired, in pursuance of the original concerted plan and with reference to the common object.

67. When it is uncertain in which of several districts an offence was committed; or

Place for inquiry or trial where scene of offence is uncertain;

where an offence is committed partly in one district and partly in another; or

or not in one district only;

where the offence is a continuing one and continues to be committed in more districts than one; or

or offence is continuing;

where it consists of several acts done in different districts,

or consists of several acts.

it may be inquired into and tried in any one of any of such districts.

Illustrations.

(*a.*) An offence committed on a journey or voyage may be inquired into and tried in any district through which the person by whom the offence was committed, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage[b]

(*b.*) An offence committed near the boundary between two districts may be inquired into and tried in either.

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a This includes an illegal admission. See sec. 4 *supra*.

b See *The Queen* v. *Piran*, 13 Beng. Appendix 4. This and (*b*), (*c*), (*d*) and (*e*) are substantive enactments, not illustrations.

(*c.*) A charge of being a thug, or of having belonged to a gang of dacoits, may be inquired into and tried wherever the person charged happens to be when the charge is made.

(*d.*) A charge of having escaped from custody may be inquired into and tried wherever the person charged happens to be when the charge is made.

(*e.*) A charge of criminal misappropriation, or of criminal breach of trust, may be inquired into and tried, either in the district in which the property which is the subject of the offence was received, or in the district or districts in which the whole or any part of it has been misappropriated, or where the offence of criminal breach of trust has been wholly or partly committed.

(*f.*) A steals a buffalo from B in district W, and personally, or by his agents, conveys the buffalo through districts X and Y into district Z. This is a continuing offence, and A may be tried either in W, X, Y or Z.

Murder as a thug, dacoity or dacoity with murder.

68. The offence of murder as a thug, dacoity or dacoity with murder may be inquired into and tried wherever the person accused may happen to be when arrested, or in any other district in which he might be tried under any other provision of this Code, or any other law relating to the trial of such offence.

High Court to decide, in case of doubt, district where inquiry shall take place.

69. Whenever any doubt arises as to the district in which any offence should be inquired into or tried, the High Court within whose jurisdiction the offender is apprehended may decide in which district the offence shall be inquired into or tried.

Effect, on sentence, of holding investigation, inquiry or trial in wrong district.

70. No sentence or order of any Criminal Court shall be liable to be set aside merely on the ground that the investigation, inquiry or trial was held in a wrong district or Sessions Division,[a] unless it is proved, or appears, that the accused person was actually prejudiced in his defence, or the prosecutor in his prosecution, by such error, in either of which cases a new trial may be ordered.

CHAPTER VII.—Of Criminal Jurisdiction over European British Subjects.[b]

"European British subjects."

71. The expression "European British subjects" means in this Act—

(1.) All subjects of Her Majesty, born, naturalized or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American, or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal.

(2.) The children and grand-children of any such person by legitimate descent.

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[a] Otherwise where it was held in a wrong Province, 13 Beng. Appendix 8.
[b] See Act No. IX of 1874, s. 30.

72. No Magistrate, or Justice of the Peace, or Sessions Judge shall have jurisdiction to inquire into a complaint or try a charge against a European British subject, unless he is himself a European British subject.

Officers who may inquire into and try offences committed by European British subjects.

No Magistrate shall have such jurisdiction unless he is a Magistrate of the First Class and a Justice of the Peace.

No Justice of the Peace shall have such jurisdiction unless he is a Magistrate of the First Class.

73. Any Magistrate who is authorized by law to entertain complaints may entertain, against European British subjects, such complaints as he is authorized to entertain in the case of other persons.

Who may hear complaints and issue process against them.

If he issues any process for the purpose of compelling the appearance of a European British subject accused of an offence, such process must be returnable before a Magistrate competent to inquire into or try the case.

74. Any competent [a] Magistrate may inquire into complaints of any offence made against a European British subject.

Magistrates competent to receive complaints against them.

If the offence complained of is a Magistrate's case [b] and can, in the opinion of such Magistrate, be adequately punished by him, he shall proceed as is hereinafter in this Code directed, according to the nature of the offence; and, on conviction, may pass on such European British subject any sentence warranted by law, not exceeding three months' imprisonment, or fine up to one thousand rupees, or both.

When such Magistrate may try, and extent of his jurisdiction.

75. When the offence complained of cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused person ought to be committed, commit him to the Court of Session.

When commitment is to be to Court of Session.

[c] When the offence, or one of the offences, complained of is punishable with death or transportation for life, the commitment shall be to the High Court.

And where any person so committed is charged with several offences, of which one is punishable with death or transportation and the other with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offence.

76. Sessions Judges or Additional Sessions Judges, and, when specially empowered in that behalf by the Local Government, Assistant Sessions Judges who are European British subjects and who have been Assistant Sessions Judges for not less than three years, may pass on European British subjects

Jurisdiction of Court of Session.

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[a] See sec. 72 *supra*. [b] See definition in sec. 4 *supra* [c] Act No. XI of 1874, section 12.

any sentence warranted by law, not exceeding one year's imprisonment, or fine, or both.

When Sessions Judge finds his powers inadequate.

If, at any stage of the proceedings, the Sessions Judge thinks the offence cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. The Sessions Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before such High Court.

Procedure when Sessions Judge is not a European British subject.

77. If the Sessions Judge of the Sessions Division within which the offence is ordinarily triable is not a European British subject, the case shall be reported by the committing Magistrate for the orders of the High Court.

Mode of conducting trials by Court of Session.

78. Trials of European British subjects before the Court of Session shall be conducted according to the provisions of chapter XIX.

In trials with assessors not less than half the number of assessors, and in trials by jury not less than half the number of jurors, shall be European British subjects.

Appeal from conviction of such subject by Magistrate.

79. Any European British subject who is convicted by a competent Magistrate of any offence, may appeal either to the Court of Session or to the High Court. [a]

Appeal from conviction by Court of Session.

80. Any European British subject who is convicted of any offence by any Court of Session, may appeal to the High Court. [a]

Right of European British subject under detention to apply for order to produce his person.

81. Any European British subject who is detained in custody by any person, and who considers such detention unlawful, may apply to the High Court which would have jurisdiction over him in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, [b] for an order

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[a] however light the sentence, see the penultimate para. of sec. 274 *infra*.

[b] Home Department Notification dated 23rd September 1874, No. 1203.—In exercise of the powers conferred by the twenty-eighth of Victoria, cap. 15, section 3, the Governor General in Council is pleased to make the following orders:—

I.—Original and appellate criminal jurisdiction shall be hereafter exercised over European British subjects of Her Majesty by the several High Courts established at Madras and Bombay and in the North-Western Provinces of India, respectively, as below provided:

By the High Court at Madras in—
Coorg.
Upper Godávarí District of the Central Provinces.

By the High Court at Bombay in—
The Nágpur and Narbada Divisions of the Central Provinces.
The Chhattísgarh Division of the Central Provinces.
The Pargana of Mánpur, in Central India.

By the High Court of the North-Western Provinces in—
Oudh.
The Jabalpur Division of the Central Provinces.
The line of Railway from Allahabad to Jabalpur, and the lands and buildings appurtenant thereto other than the Station at Satná.
Morar Cantonment, Ajmer, and British Mairwára.

directing the person detaining him to bring him before the said High Court to abide such further order as may be made by it. The High Court, if it thinks fit, may, before issuing such order, inquire, on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance, and, when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry as it thinks necessary.

Procedure on such application.

The High Courts may issue such orders throughout the territories over which they have jurisdiction, and over such other places as the Governor General in Council may direct.

II.—The line of Railway from Allahabad to Jabalpur, and the lands and buildings appurtenant thereto, shall be deemed to be part of the District of Allahabad for the purpose of the trial by the Court of Sessions at Allahabad of offences cognizable by a Court of Session, and alleged to have been committed on the said line of railway, lands and buildings.

This Notification cancels the Notifications numbered and dated respectively as follows:—

Home Department No. 221, dated 10th January 1867.
" " No. 4919, dated 27th October 1869.
" " (Judicial) No. 880, dated 31st May 1871.

Gazette of India, 26th September 1874, p. 484.

Foreign Department Notification dated 23rd September 1854, No. 178J.—With reference to Notification No. 1203 of this date, in the Home Department, the Governor General in Council is pleased, in the exercise of the powers conferred by the 28th Victoria, cap. 15, section 3, to make the following orders:—

Original and appellate criminal jurisdiction over European British subjects of Her Majesty, being Christians, resident in the Native States, Territories, and Chiefships, below named, shall, until the Governor General in Council otherwise orders, be exercised by the High Courts of Judicature established at Fort William, Madras, Bombay, and in the North-Western Provinces, respectively, as follows:—

I.—By the High Court at Fort William in—

Manipur.
Kuch Bihár.
The States in the Khásia Hills.
The Katák Tributary Mahals.
The Tributary Maháls of Chutia Nágpur.
Sikkim.
Bhután.
Hill Tipperah.
Nepal.
The Territories of Chiefs or Tribes adjoining the Bengal Frontier.

II.—By the High Court at Madras in—

Mysore.
Travancore.
Cochin.
Pudukottai.
Banganapalle.
Sandur.

III.—By the High Court at Bombay in—

The Haidarábád Assigned Districts.
Haidarábád, excepting the Assigned Districts.
Ali Morad's Territory in Upper Sindh.
Kolhapur.
Sawant Wari.
The Southern Mahratta State.
The Satara Jágírs.
Jingira.
Suchin.
Bansda.
Dharmpur.
Jawar.
Cambay.
The Gaikwád's Territories.
The States in Káthíawád.
Kachh.
The States in the Pahlanpur Agency.
The States in the Mahi Kanta Agency.
The States in the Rewa Kanta Agency.
Penth in the Ahmadnagar Collectorate.
The Territories of Chiefs or Tribes adjoining the Sindh Frontier.
Bhopal.
Barwani.
Dewas.
Dhar.
Indore, excepting the District of Alampur in Bundelkhand.
Jobatt.
Burwai.
Kattiwara.
Muhammadgarh.
Matwara.
Rattan Mal.
Ali Rajpur.
Jhabua.

Power of High Courts as to issue of writs.

82. Neither the High Courts nor any Judge of such High Courts shall issue any writ of *habeas corpus,* mainprise, *de homine replegiando,* nor any other writ of the like nature, beyond the Presidency towns.

Jaura.
Kilchipur.
Narsinghar.
Rajghar.
Ratlam.
Sitamau.
Sillana.
Gwalior, districts of—
Amjhira,
Agar,
Bag,
Diktan,
Mandisur,
Nimuch,
Ujein,
Sagor,
Shujawalpur,
Sonkach,
and
} With the several Parganas subordinate thereto, included in the charge of Sindia's Sir Subah of Malwa.

Bhilsa,
Ganj Baroda,
Malharghar,
Maksudanghar.
} With the several Parganas subordinate thereto, which form part of the charge of Sindia's Sir Subah of Esanghar.

Jalra Patan, districts of—
Gangrar.
Pach Pahar.
Daeg.

Tonk districts of—
Pirawa.
Nimbhera.
Seronji.
Meywar.
Pertabghar.
Marwar.
Dungarpur.
Banswara.
Jhalawar.
Serohi.
Jaisalmer.
The Feudatory States in the Central Provinces, *viz.* :—
Kalahandi or Karond.
Raigarh Baigarh.
Sarangarh.
Patna.
Sonepur.
Rairakhol.
Bamra.
Sakti.
Kawarda.
Khairagarh.
Nandgaon.
Kondka or Chhuikhadan.
Kanker.
Baster.
Makrai.

IV.—By the High Court of the North-Western Provinces in—

Garhwál.
Dholpur.
Bhartpur.
Alwar.
Jeypur.
Keroli.
Tonk, with the exception of Pirawa, Nimbhera and Seronje.
Kotah.
Bundi.
Kishengarh.
Bikáner.
Shapura.
Rámpur.
Gwalior.—The whole of the State, excepting the Sir Subahship of Malwa, and the districts under the Sir Subah of Esanghar, enumerated above.
The Mairwara parganas belonging to Meywar and Marwar.
Bandelkhand States and Chiefships—
Adjeygarh.
Alipura
Baoni.
Beronda.
Behat.
Behri.
Bhaisonda.
Bijawar
Bijna
Chirkhari.
Chatrapur.
Dhurwai.
Dhattiah.
Gerauli.
Gaurihar.
Jigni.
Jassu.
Kamta Rijola.
Koti.
Kanniadhana.
Logasi.
Maihir.
Nagod.
Naiagoan Rebai.
Urcha.
Pahari Banka.
Pahara Chaube.
Paldeo.
Panna.
Rewah.
Sohawal.
Sampthar.
Surila.
Tiraon.
Tori Futtehpur.
Holkar's District of Alampur.

Gazette of India, 26th September 1874, p. 485

83. When any person claims to be dealt with as a European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such Magistrate shall, on such statement, decide whether he is or is not a European British subject, and shall deal with him accordingly; and if any such person is dissatisfied with such decision, the burden of proving that it was wrong shall be upon him. If the Magistrate decide that the accused person is not a European British subject, the trial shall proceed, but such decision shall form a ground of appeal.

Procedure on claim of European British subject to be dealt with as such.

84. If a European British subject does not claim to be dealt with as such before the Magistrate before whom he is tried or committed, he shall be held to have waived his privilege as such European British subject.

Failure to plead status a waiver.

If the Magistrate has reason to believe that any person brought before him is a European British subject, it is his duty to ask him whether he is one or not.

85. If a person who is not a European British subject is dealt with as such and does not object, the proceedings shall be valid.

Trial of person not a European British subject under this chapter.

86. All High Courts shall deal with proceedings against European British subjects outside of the Presidency towns in the manner in which they are empowered by this Act, or by any other law in force for the time being, to deal with the proceedings of Magistrates outside the Presidency towns; and not according to the law of England relating to the dealings of the superior Courts in England with the proceedings of Justices of the Peace in England.

Procedure of High Courts.

Foreign Department Notification dated 23rd September 1874, No. 179J —In exercise of the powers vested in him by Section 6 of Act XI of 1872, the Governor General in Council is pleased to direct that all Justices of the Peace within the States, Territories, and Chiefships, specified in the preceding Notification, shall commit for trial to the High Courts, respectively having jurisdiction under the said Notification, such European British subjects, being Christians, as are required by Act X of 1872 to be committed to a High Court.—*Gazette of India*, 26th September 1874, p. 486.

Foreign Department Notification dated 23rd September 1874, No. 180J.—In modification of Notifications No. 2199G, dated 11th October 1872, and No. 396G, dated 14th February 1873, the Governor General in Council is pleased to direct that the powers of a High Court within the lands described in the aforesaid Notifications shall not be exercised by the Agent to the Governor General in Rájputána, in cases in which the accused are European British subjects being Christians.—*ibid.*, p. 486.

Foreign Department Notification dated 23rd September 1874, No. 181J.—In modification of Notification No. 159J, dated 7th August 1873, the Governor General in Council is pleased to direct that the powers of a High Court within the territories described in the aforesaid Notification shall not be exercised by the Agent to the Governor General in Central India, in cases in which the accused are European British subjects being Christians.—*ibid.*, p. 486.

Foreign Department Notification dated 18th December 1874, No. 215J.—With reference to Notification No. 178J of the 23rd September 1874, the Governor General in Council directs the addition of Savanur to the list of Native States, Territories and Chiefships in which the High Court at Bombay is authorized to exercise original and appellate criminal jurisdiction over European British subjects of Her Majesty, being Christians.—*ibid.*, 19th December 1874, p. 612.

The High Courts shall have the same powers with respect to the inquiries and charges against European British subjects, as Courts of Session have with respect to inquiries and charges against other persons.

Proceedings against European British subjects to be regulated by this Act.

87. All Magistrates and Courts of Session, proceeding against European British subjects under this chapter, shall proceed under the provisions of this Act, and not according to the law of England relating to Justices of the Peace; and all the provisions of this Act, not inconsistent with the provisions of this chapter, shall apply to such proceedings.

Place of confinement.

88. European British subjects sentenced to imprisonment shall be confined in such places as the Local Government may either specially or generally appoint.[a]

PART III.

OF THE POLICE.

CHAPTER VIII.—Offences of which Information must be given to the Police, and Duty of the Public.

All persons to give information of certain offences.

89. Every person aware of the commission of any offence made punishable under sections one hundred and twenty-one, one hundred and twenty-one A, one hundred and twenty-two, one hundred and twenty-three, one hundred and twenty-four, one hundred and twenty-four A, one hundred and twenty-five, one hundred and twenty-six, one hundred and thirty, three hundred and two, three hundred and three, three hundred and four, three hundred and eighty-two, three hundred and ninety-two, three hundred and ninety-three, three hundred and ninety-four, three hundred and ninety-five, three hundred and ninety-six, three hundred and ninety-seven, three hundred and ninety-eight, three hundred and ninety-nine, four hundred and two, four hundred and thirty-five, four hundred and thirty-six, four hundred and forty-nine, four hundred and fifty, four hundred and fifty-six, four hundred and fifty-seven, four hundred and fifty-eight, four hundred and fifty-nine or four hundred and sixty of the Indian Penal Code, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest Police officer or Magistrate.

Landholders and others bound to report certain matters.

90. Every Village Headman, Village Watchman, owner or occupier of land, or the agent of any such owner or occupier, and every Native officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, is bound forthwith to communicate to the nearest

[a] See *Calcutta Gazette*, 1st January 1873, p. 18: *Fort St. George Gazette*, 24th December 1872, p. 2065: *Bombay Government Gazette*, 1873, p. 99: 1874, p. 297: *Panjáb Gazette*, 1873, p. 76: *Central Provinces Gazette*, 17th May 1873, Part 1 A, p. 80.

Magistrate, or to the officer in charge of the nearest Police-station, any information which he may obtain respecting—

(*a.*) the residence of any notorious receiver or vendor of stolen property at the village of which he is headman or watchman, or in which he owns or occupies land, or collects rent or revenue, as the case may be ;

(*b.*) the resort to any place within the limits of such village of any person or persons known or reasonably suspected of being a thug or robber ;

(*c.*) the commission or intention to commit suttee or other non-bailable offence at or near such village ;

(*d.*) the occurrence of any sudden or unnatural death.[a]

All persons to assist Magistrate and Police in certain cases.

91. Every person is bound to assist a Magistrate or Police officer demanding his aid

in the prevention of a breach of the peace,

or in the suppression of a riot or an affray,

or in the taking of any other person whom such Magistrate or Police officer is authorized to arrest.

CHAPTER IX.—Of Arrest without Warrant.

When Police may arrest without warrant.

92. A Police officer may, without orders from a Magistrate and without a warrant, arrest—

Firstly.—Any person who, in the sight of such Police officer, commits a cognizable offence :

Secondly.—Any person against whom a reasonable complaint has been made, or a reasonable suspicion exists, of his having been concerned in any such offence :

Thirdly.—Any person against whom a hue and cry has been raised of his having been concerned in any such offence :

Fourthly.—Any person who has been proclaimed, either under this Act, or in a District or Police Gazette or Notification :

Fifthly.—Any person found with property in his possession which may reasonably be suspected to be stolen property :

Sixthly.—Any person who obstructs a Police officer while in the execution of his duty, or who escapes from lawful custody, and

Seventhly.—Any person reasonably suspected of being a deserter from Her Majesty's Army, or Her Majesty's Indian Army.[b]

Person charged refusing to give his name and residence.

93. Any person known to have committed, or suspected of having committed, an offence for which a Police officer is not authorized to arrest without

[a] See *The Queen* v. *Ahmed Ali*, 22 Suth. W. R., Crim. Rulings, 42.

[b] See, also, Acts No. V of 1861, s. 34 : No. XXVII of 1871, s. 20 : No. XV of 1873, s. 35 : No. VII of 1874, s. 33, and Bengal Act No. III of 1869, for other cases in which the Police may arrest without warrant.

a warrant, and who refuses on demand of a Police officer to give his name and residence,

or gives a name or residence which there is reason to believe to be false,

may be detained by such Police officer for the purpose of ascertaining the name or residence of such person; and shall, within twenty-four hours, be forwarded to the Magistrate having jurisdiction, unless before that time his true name and residence are ascertained, in which case such person shall be forthwith released.

Arrest of vagabonds.

94. An officer in charge of a Police-station may, without orders from a Magistrate and without a warrant, arrest or cause to be arrested any person found lurking within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

or any person who is a reputed robber, house-breaker, thief, receiver of stolen property knowing it to be stolen,

or who is of notoriously bad livelihood.

Police to prevent certain offences.

95. Every Police officer shall prevent, and may interpose for the purpose of preventing, the commission of any cognizable offence.[a]

Information of design to commit such offences.

96. Every Police officer receiving information of a design to commit any such offence, shall communicate such information to the Police officer to whom he is subordinate, and to any other officer whom it may concern to prevent or take cognizance of the commission of any such offence.

Arrest to prevent such offences.

97. A Police officer knowing of a design to commit any such offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if the commission of the offence cannot be otherwise prevented.

Injury to public property.

98. A Police officer may, of his own authority, interpose for the prevention of any injury attempted to be committed in his view to any public property, moveable or immoveable,

or to prevent the removal or injury of any public land-mark, or buoy or other mark used for navigation.

If necessary, such Police officer may detain the person doing such injury according to the provisions of section ninety-three.

Ingress to be allowed into house entered by person of whom Police in search.

99. If there is reason to believe that any person liable to arrest under this chapter without a warrant, of whom a Police officer is in search, has entered into or is within any house or place, it shall be the duty of the person residing in or in charge of such house or place, on the demand of such Police officer, to allow ingress thereto, and all reasonable facilities for a search therein.

Procedure where ingress not obtainable.

100. If ingress to such house or place cannot be obtained under section ninety-nine, the Police officer authorized to make the arrest shall take such

[a] See secs. 97 and 101 *infra*.

precautions as may be necessary to prevent the escape of the person to be arrested, and send immediate information to any Magistrate having jurisdiction.

If a warrant cannot be obtained without affording such person an opportunity of escape, and there is no person authorized to enter without a warrant on the spot, the Police officer may make an entry into such house or place and search therein.

Person arrested to be taken before Magistrate or officer in charge of Police-station.

101. A Police officer making an arrest under this chapter shall, without unnecessary delay, take or send the person arrested before the Magistrate having jurisdiction in the case, or before the officer in charge of a Police-station.[a]

Procedure when Police officer deputes subordinate to arrest without warrant.

102. When any officer in charge of a Police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested by such officer without a warrant, he shall deliver to the Police officer required to make the arrest an order in writing, specifying the person to be arrested, and the offence for which the arrest is to be made.

The provisions of sections ninety-one and one hundred and seventy-six to one hundred and eighty-two (both inclusive) shall apply to every order in writing issued under this section.

Police may pursue offenders into other jurisdictions.

103. For the purpose of arresting any person accused of a cognizable offence, a Police officer may pursue any such person into the limits of the local jurisdiction of another Police officer, whether subordinate to the same Magistrate as himself, or to the Magistrate of any other district, and whether such place be in the same province or not.

Detention of offenders attending Court.

104. Any person attending a Criminal Court, although not upon an arrest or summons on a complaint made, may be detained by such Court for the purpose of examination, for any offence which, from the evidence, he may appear to have committed, and may be proceeded against as though he had been arrested or summoned on a complaint made.[b]

When the detention takes place in the course of an inquiry under chapter XV, or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses reheard.

Of Arrest by Private Persons.

Arrest by private persons.

105. Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence.

Arrest of deserters from British ships.

106. The master or mate of a British merchant ship may, either with or without the assistance of the Police, who are bound to aid if so required by

[a] See sec. 124 *infra.* [b] But see sec. 231 *infra.*

such master or mate, arrest seamen or apprentices duly engaged under the Statute 17 & 18 Vic., cap. 104, or other law for the time being in force relating to merchant shipping, who refuse to join or desert from the vessel in which they contracted to serve.

Such arrest shall be made only at the request and on the responsibility of such master or mate, and he shall be required by the Police to accompany the arrested person, should he be apprehended, before the Magistrate having jurisdiction; and it shall be the duty of such master or mate to obey such requisition.

How to proceed with person arrested.

107. A private person making an arrest under this chapter shall forthwith make over the person arrested to a Police officer; and, in the absence of a Police officer, shall take such person to the nearest Police-station. The Police shall deal with such person according to the provisions of section ninety-two or ninety-three, as the case may be, and shall not arrest or detain him unless he appears to be liable to arrest or detention under the section applicable.

Offence committed in Magistrate's presence.

108. When any offence is committed in the presence of a Magistrate, he may order any person to arrest the offender, and may thereupon commit him to custody, or, if the offence is bailable, may admit him to bail.

CHAPTER X.—Powers of the Police to investigate.

What offences Police officer may investigate.

109. An officer in charge of a Police-station may, without order of a Magistrate, investigate any offence cognizable by the Police.[a]

What offences Police may not investigate.

110. A Police officer may not, without the order of a Magistrate of the First or Second Class, investigate an offence not cognizable by the Police.

A Magistrate of the First or Second Class may, as provided in sections twenty-four and twenty-six, order the Police to investigate; and, on receipt of an order to investigate a non-cognizable case, a Police officer may exercise the same powers in respect of the investigation as in a cognizable case.

Saving of powers vested in Police by special or local law.

111. Nothing in section one hundred and ten shall be held to interfere with the exercise of any powers vested in a Police officer by any special or local law, or with the performance of any duty which is imposed upon a Police officer by any such special or local law.

Complaint to Police to be in writing.

112. Every complaint preferred to an officer in charge of a Police-station shall be reduced into writing, and shall be signed, sealed or marked by the person making it; and the substance thereof shall be entered in a book to be kept by such officer in the form prescribed by the Local Government.

Complaint in non-cognizable cases.

113. If a complaint is preferred to an officer in charge of a Police-station, of the commission within his local jurisdiction of an offence which is not cog-

[a] See sec. 4 and sched. IV, col. 3.

nizable by the Police, the Police officer shall enter the substance of it in the station diary, and shall refer the complainant to the Magistrate.

Upon information, &c., Police officer in charge of station to proceed in person or depute a subordinate.

114. If, from information or otherwise, an officer in charge of a Police-station has reason to suspect the commission, within his local jurisdiction, of an offence cognizable by the Police, he shall send immediate intimation to the Magistrate having jurisdiction, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and apprehension of the offender.

Police officers shall investigate offences committed within the local limits of their jurisdiction; but they may investigate offences committed outside of those limits, in cases in which a Magistrate might, under the provisions of chapter VI, inquire into an offence not committed within his district.

No such proceeding shall, at any stage, be called in question on the ground that such offence was not committed within such officer's local jurisdiction.

Preliminary inquiry.

115. Such Magistrate, on receiving intimation of the commission of any such offence, may at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into or otherwise to dispose of such case in the manner provided in this Act.

Where local investigation dispensed with.

116. Provided that, when any complaint is made against any person by name, and the case is not of a serious nature, the officer in charge of a Police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot, unless such local investigation appears to be necessary.

Where Police officer in charge sees no sufficient ground for investigation.

117. Provided that, if it appear to the officer in charge of a Police-station that there is no sufficient ground for entering on an investigation, or that the immediate apprehension of the accused is not necessary for the ends of justice, he shall not proceed in the case, but shall report the substance of the complaint or information for the orders of the Magistrate having jurisdiction.[a]

Such report shall be submitted through such superior officer of Police as the Local Government shall, by general or special order, in that behalf appoint. Such superior officer may give such instructions to the officer in charge of the Police-station as he deems fit, and shall, after recording such instructions on such report, transmit the papers without delay to the Magistrate having jurisdiction.

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[a] See secs. 25, 27, 35, 40 *supra* and 141 *infra*.

Police officer's power to summon witnesses.

118. An officer in charge of a Police-station, or other officer making an investigation, may, by an order in writing, require the attendance before himself of any person, being within the limits of his own or any adjoining station, who, from the statement of the complainant or otherwise, appears to be acquainted with the circumstances of any case which such officer is investigating; and such person shall attend as required and shall answer all questions relating to such case put to him by such officer:

Provided that no person shall be bound to answer any questions tending to criminate himself.

Oral examination of witnesses by Police.

119. An officer in charge of a Police-station, or other Police officer making an investigation, may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Such person shall be bound to answer all questions relating to such case, put him by such officer, other than questions criminating himself.

Proviso.

No statement so reduced into writing shall be signed by the person making it, nor shall it be treated as part of the record or used as evidence.

No inducement to be offered to confess.

120. No Police officer or other person shall offer any inducement to an accused person, by threat or promise or otherwise, to make any disclosure or confession,[a] whether such person is under arrest or not.

But no Police officer or other person shall prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

Police not to record statement or confession.

121. No Police officer shall record any statement, or any admission or confession of guilt, which may be made before him by a person accused of any offence:

Proviso.

Provided that nothing in this section shall preclude a Police officer from reducing any such statement or admission or confession into writing for his own information or guidance, or from giving evidence of any dying declaration.

Powers of Magistrates to record statements and confessions.

122. Any Magistrate may record any statement made to him by any person, or any confession made to him by any person, accused of an offence by any Police officer or other person. Such statements shall be recorded in the manner hereinafter prescribed for recording evidence, and such confessions shall be taken[b] in the manner provided in sections three hundred and forty-five and three hundred and forty-six, and shall, when recorded, be forwarded to the Magistrate by whom the case is inquired into or tried. No Magistrate shall record any such confession unless, upon inquiry,[b] he has reason to believe

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a Compare sec. 184 *infra*.

b *Reg.* v. *Bai Ratan*, 10 Bomb. 175.

that it was made voluntarily, and he shall make a memorandum at the foot of any such confession to the following effect :—

"I believe that this confession was voluntarily made."

(Signed) *A. B.*,
Magistrate.

Investigation by Police.

123. If the person arrested appears, from the information obtained, to have committed the offence charged, and the offence is not bailable, the officer in charge of the Police-station shall forward him under custody to the Magistrate having jurisdiction,[a] and shall bind over the complainants, if any, and so many of the persons who appear to be acquainted with the circumstances of the case as may be necessary, to appear on a fixed day before such Magistrate, and to remain in attendance till otherwise directed.

When any subordinate Police officer has made any investigation under this chapter, he shall, if so required by the officer in charge of the Police-station, submit a report of such investigation to him ; or he may do so without such requisition ; and the officer in charge of the Police-station shall then proceed as if he had made the investigation himself.

Accused not to be detained by Police more than twenty-four hours without special authority.

124. No Police officer shall detain an accused person in custody for a longer period than, under all the circumstances of the case, is reasonable ; and such period shall not, in the absence of the special order of a Magistrate, whether having jurisdiction to inquire into or try the case or not, exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

If the investigation has not been completed within twenty-four hours and no such special order has been passed, and if there are grounds for believing that the accusation is well founded, the officer in charge of the Police-station shall forward the accused person to the Magistrate having jurisdiction, with a statement of the offence for which he has been arrested.

A Magistrate authorizing detention under this section shall record his reasons for so doing.

If such order be given by a Magistrate other than the Magistrate of the District or of a Division of a District, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is subordinate.

Procedure of Police in case of deficient evidence.

125. If it appears to the officer in charge of the Police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the transmission of an accused person to the Magistrate, such officer shall release

[a] See secs. 25, 27, 35, 40 *supra*, and 141 *infra*.

the accused person on bail,[a] or on his own recognizance, to appear when required, and shall submit a report of the case for the orders of the Magistrate having jurisdiction.[b] Such report shall be submitted through the superior officer of Police mentioned in section one hundred and seventeen, who may, pending the orders of the Magistrate, give instructions as to the conduct of the investigation.

Daily record of proceedings.

126. A Police officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the complaint or other information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained by his investigation.

Any Criminal Court may send for the Police diaries of a case under inquiry or trial in such Court, and may use such diaries to aid it in such inquiry or trial. Neither the prisoner nor his agents shall be entitled to call for them, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the Police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police officer, the provisions of the law relating to documents used for such purposes shall apply to them.

Report of Police officer.

127. The investigation shall be completed without unnecessary delay, and, as soon as it is completed, the Police officer making the same shall forward to the Magistrate having jurisdiction a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the complaint, and the names of the persons who appear to be acquainted with the circumstances of the case, and shall also send to such Magistrate any weapon or article which it may be necessary to produce before him.

The Police officer shall state whether the accused person has been forwarded in custody, or has been released on bail or on his own recognizance.

If the accused person be detained in custody, the Police officer shall state the fact and the cause of his detention.

Admission to bail.

128. A person accused of any non-bailable offence shall not be admitted to bail if there appear reasonable ground for believing that he has been guilty of the offence imputed to him:

But a person accused of any bailable offence shall be admitted to bail, if sufficient bail be tendered for his appearance before the Magistrate having jurisdiction in respect of the offence.[a]

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[a] See sec. 399 *infra*.

[b] See sec. 132 *infra*.

129. The bail to be taken under section one hundred and twenty-eight shall not be excessive; and the surety or sureties shall bind himself or themselves under a specific penalty to produce the accused person before the Magistrate on or before a fixed day, and from day to day, until otherwise directed, to answer the complaint.

Bail not to be excessive.

Terms of security.

130. Every complainant and other person acquainted with the facts and circumstances of the case, whose attendance before the Magistrate having jurisdiction is deemed necessary by the Police officer making the investigation, shall execute a recognizance in the form (F) given in the second schedule hereto, or to the like effect, for appearance before the Magistrate having jurisdiction in respect of the offence on a fixed day.

Complainants and witnesses to execute recognizances to appear.

If the Court of the Magistrate of the District, or of a Magistrate of a Division of a District, be inserted in the bond, it shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided notice be given to such complainant or witness.

Such day shall be the day whereon the accused person is to appear, if he has been admitted to bail, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the recognizance is executed shall, after delivering to the complainant or one of the witnesses a duplicate thereof, send it with his report to the Magistrate having jurisdiction.[a]

No Police officer shall, except as provided in the next following section, accompany the complainant or witnesses on his or their way to the Court of the Magistrate.

131. A Police officer shall not subject any complainant or witness to restraint or unnecessary inconvenience, nor require him to give any security for his appearance, other than his own recognizance.

Complainants and witnesses not to be subjected to restraint.

But if any complainant or witness refuses to attend, or to execute the recognizance directed in section one hundred and thirty, the officer in charge of a Police-station may forward him under custody to the Magistrate having jurisdiction, who may detain him in custody until he executes such recognizance, or until the hearing is completed.

Recusant complainant or witness may be forwarded in custody.

132. Officers in charge of Police-stations shall report to the Magistrate of the District, or the Magistrate of the Division of a District, the cases of all persons apprehended within the limits of their respective stations, or detained under section ninety-three, whether such persons have been admitted to bail or otherwise, under whatever law such persons may have been arrested.

Police to report apprehensions.

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[a] As to enforcing the recognizance, see secs 396, 397, 398 *infra*.

Discharge of person apprehended.

No person who has been apprehended by a Police officer shall be discharged, except on bail, or on his own recognizance, or under the special order of a Magistrate.

Police to inquire and report on unnatural and sudden deaths.

133. The officer in charge of a Police-station, on receiving notice or information of the unnatural or sudden death of any person, shall immediately give intimation thereof to the nearest Magistrate duly authorized,[a] and shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and report the apparent cause of death, describing any mark of violence which may be found on the body, and stating in what manner, or by what weapon or instrument, such mark appears to have been inflicted.

The report shall be signed by such Police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the Magistrate of the District, or to the Magistrate of the Division of a District.

When there is any doubt regarding the cause of death, the Police officer shall forward the body, with a view to its being examined, to the nearest Civil Surgeon or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of putrefaction on the road.

In the Presidencies of Madras and Bombay, the Head of the village may also in like manner make the investigation and report to the nearest Magistrate duly authorized.

Power to summon persons.

134. An officer in charge of a Police-station may, by an order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Any person so summoned shall be bound to attend and to answer all questions (other than questions which would criminate him).[b]

If the facts do not disclose a cognizable offence to which section one hundred and twenty-seven is applicable, such persons shall not be required by the Police officer to attend a Magistrate's Court.

Inquiry into cause of such death by nearest Magistrate.

135. The nearest Magistrate, duly authorized,[c] may hold an inquiry into the cause of any such death, either instead of or in addition to the investigation held by the Police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence,

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[a] See secs. 23, 25, 27, 28, 35, 40 *supra* and 135 *infra*.

[b] *Sic.* Read 'questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.'

[c] See secs. 23, 25, 27, 28 *supra*, and *Bombay Govt. Gazette*, 1872, p. 1325: *ibid.* 1873, pp. 16, 439.

although no specific charge has been made against any person. The Magistrate holding such an inquiry shall record the evidence taken upon it in any of the manners hereinafter prescribed, according to the circumstances of the case.

136. The powers to be exercised by an officer in charge of a Police-station under this chapter shall be exercised, in the event of his absence from the station-house or of his illness, by the Police officer next in rank present at the Police-station, above the rank of a constable.

Substitute for officer in charge of Police-station during his absence or illness.

137. Officers of Police superior in rank to officers in charge of a Police-station may exercise the same powers throughout their local jurisdictions as may be exercised by officers in charge of Police-stations within the limits of such stations.

Powers of superior officers of Police.

138. For the purposes of this Act, an Assistant District Superintendent of Police may exercise any of the powers of a District Superintendent of Police, subject to the control of such District Superintendent of Police; or, in the absence of the District Superintendent of Police and the Assistant District Superintendent, the senior officer of Police on the spot may be directed by the Magistrate of the District to exercise the powers of a District Superintendent of Police.

Assistant District Superintendent of Police may exercise powers of District Superintendent.

PART IV.

OF PROCEEDINGS TO COMPEL APPEARANCE.

CHAPTER XI.—Of Complaints to a Magistrate.

139. Proceedings to compel the appearance before a Magistrate of persons accused or suspected of offences, who have not been arrested without warrant, may be by summons or by warrant.

Processes.

140. A summons or a warrant may be issued—

When summons or warrant may be issued.

(*a.*) Upon a report by the Police under chapter X[a]; but if the person complained of is already in custody, no complaint, summons or warrant is necessary:

(*b.*) Upon information or report by a Police officer as to a non-cognizable offence. Such information or report shall be regarded as a complaint[b]:

(*c.*) Upon a complaint by a private person. Any person acquainted with the facts of a case may make a complaint:[c]

(*d.*) Upon suspicion entertained by a Magistrate that an offence has been committed.[d]

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[a] See secs. 117, 123, 125 *supra*.
[b] See secs. 113 *supra* and 141 *infra*.
[c] See sec. 141 *infra*.
[d] See sec. 142 *infra*.

Who may entertain complaints.

141. The Magistrate of the District,
any Magistrate of a Division of a District, or
any Magistrate duly empowered in that behalf,[a]
in any case which he is competent to try or to commit for trial,

may entertain a complaint of an offence, whether preferred directly by the complainant, or on report of a Police officer, and may issue process, in the manner hereinafter prescribed, to compel the appearance of persons accused of such offences.

Effect of reference.

Any Magistrate to whom any case is duly referred, by any Magistrate duly empowered to make such reference, may dispose of such case.

Effect of complaint or Police report.

A complaint or a Police report gives jurisdiction to a competent Magistrate[b] to inquire into or try any offence covered by the facts complained of or reported, and also to try or commit for trial any person who, at the time when the complaint or report is made, or subsequently, appears to have committed the offence disclosed.

Who may act without complaint.

142. The Magistrate of the District,
any Magistrate of a Division of a District, or
any Magistrate duly empowered in that behalf,[c]
in any case in[d] which he is competent to try or to commit for trial,

may, without any complaint, take cognizance of any offence which he suspects to have been committed, and may issue process in the manner hereinafter prescribed to compel the appearance before him of persons whom he suspects to have committed any such offence.

Complaint or sanction required in certain cases.

Nothing in this or in the last preceding section shall be held to authorize a Magistrate to take cognizance of a case without complaint, when the offence falls under chapters XIX, XX or XXI of the Indian Penal Code; nor to entertain a complaint, or to take cognizance without complaint, of an offence, without sanction, where such offence, by any law in force, may not be entertained without sanction.

Who may commit for trial.

143. The Magistrate of the District,
any Magistrate of a Division of a District,
any Magistrate of the First Class, or
any Magistrate duly empowered in that behalf,[e]

may commit any person to the Court of Session for any offence triable by such Court.

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[a] See sec. 23 *supra*, and *Bombay Govt. Gazette*, 1872, p. 1325. *ibid.*, 1873, p. 16.
[b] See sec. 49 *supra*.
[c] See *Bombay Govt. Gazette*, 1872, p. 1325: *ibid.*, 1873, p. 16: *Panjáb Gazette*, 1873, p. 75.
[d] Sic.
[e] See secs. 23 and 25 *supra*, and *Calcutta Gazette*, 1873, p. 17. *Fort St. George Gazette*, 1873, p. 717. *Panjáb Gazette*, 1873, p. 75.

144. When, in order to the issuing of a summons or a warrant against any person for any offence, a complaint is made to a Magistrate,[a] such Magistrate, if he is competent to receive such complaint, shall examine the complainant. Examination of complainant.

The examination shall be reduced into writing in a summary manner and signed by the complainant, and also by the Magistrate.

Where the complaint has been made by petition, and the Magistrate neglects to examine the complainant, the trial of the person accused shall not be set aside on this ground. Effect of irregularity.

145. If the Magistrate be not competent to receive the complaint, he shall refer the complainant to a Magistrate having jurisdiction. Procedure by Magistrate not empowered to hear complaint.

146. If the Magistrate sees cause to distrust the truth of a complaint, he may postpone the issuing of process for compelling the attendance of the person complained against, and may direct a previous inquiry or investigation to be made into the truth of the complaint, either by means of any officer subordinate to such Magistrate, or of a local Police officer, or in such other mode as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint. Postponement of issue of process.

If such inquiry or investigation is made by means of some person other than an officer exercising any of the powers of a Magistrate or a Police officer, such person shall exercise all the powers conferred by this Act on an officer in charge of a Police-station, except that he shall have no power to make an arrest.

147. The Magistrate before whom such complaint is duly made may, if, after examining the complainant, there is in his judgment no sufficient ground for proceeding, dismiss the complaint.[b] Dismissal of complaint.

The dismissal of a complaint shall not prevent subsequent proceedings.

If it appears to such Magistrate that there is sufficient ground for proceeding, he shall, if the case appears to be a summons case, issue his summons, or, if the case appears to be a warrant case, his warrant, for causing the accused person to appear before himself or some other Magistrate having jurisdiction. Issue of process.

148. When a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected of having committed, any offence triable by such Magistrate and punishable with fine only, or with imprisonment for a period not exceeding six months, or with both, the Magistrate may issue his summons directed to such person, requiring him In what cases a summon may issue.

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[a] See secs. 44 and 141 *supra*

[b] See Act No XLV of 1860, s 95

to appear at a certain time and place before such Magistrate to answer to the complaint.

If the Magistrate believes that the accused person is about to abscond, he may, instead of issuing a summons, issue a warrant in the first instance for the arrest of such person.

In what cases warrant may issue on complaint.

149. When a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected of having committed, any offence triable by such Magistrate and punishable with imprisonment for a period exceeding six months,

or when a complaint is made before any Magistrate empowered to commit persons for trial before the Court of Session, that any person has committed, or is suspected of having committed, any offence triable exclusively by the Court of Session, or which in the opinion of such Magistrate ought to be tried by the Court of Session,

such Magistrate may issue his warrant to arrest such person, or, if he thinks fit, his summons requiring him to appear to answer such complaint.

Warrant to arrest, if summons not obeyed.

150. If the person served with a summons does not appear before the Magistrate at the time mentioned in such summons, and the Magistrate is satisfied that such summons was duly served [a] in what the Magistrate deems a reasonable time before the time therein appointed for appearing to the same,

or if it appears to the Magistrate that, after due diligence, the summons could not be served according to the provisions of this Act,

the Magistrate may issue his warrant to apprehend the accused person.

Magistrate may dispense with personal attendance of accused

151. In cases, of whatever nature, in which the Magistrate thinks fit to issue a summons, he may, if he sees sufficient cause, dispense with the personal attendance of the accused person, and permit him to appear by an agent duly authorized to act in his behalf.

But it shall be in the discretion of such Magistrate, at any stage of the proceedings, to direct the personal attendance of the accused person.

CHAPTER XII.—Of the Summons.

Form of summons.

152. Every summons issued by a Magistrate to an accused person shall be in writing, in duplicate, and shall be signed and sealed by such Magistrate, and shall be in the form (A) given in the second schedule to this Act, or to the like effect.

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[a] See secs. 154 and 155 *infra*.

153. A summons shall ordinarily be served through a Police officer; but the Magistrate issuing the summons may, if he see fit, direct it to be served by any other person.

Summons by whom served.

154. The summons shall be served on the accused personally, in any district where he may be, by exhibiting one of the copies and delivering or tendering the other copy to him; or, in case the accused person cannot be found, the copy may be left for him with some adult male member of his family residing with him, and the person summoned, or the person with whom the copy is left, shall sign a receipt therefor.

Summons how served.

155. When the accused person cannot be found, and there is no adult male member of his family on whom the service can be made, the serving officer shall fix a copy of the summons on some conspicuous part of the house in which the accused person ordinarily resides.

Service when accused cannot be found.

156. A Magistrate may, notwithstanding the issue of such summons, either before the appearance of the accused person as required by such summons, or after default made by him so to appear, issue a warrant of arrest against such person.

Issue of warrant in addition to summons.

157. The Magistrate of the District, a Magistrate of a Division of a District, or a Magistrate of the First Class duly authorized in that behalf [a] and having local jurisdiction in such District or Division of a District, may issue a summons or warrant [b] for the apprehension of any person within such District or Division of a District, in respect of any offence known or suspected to have been committed by such person in a different District or Division of a District, or on the high seas, or in a foreign country, and for which, if [c] committed within the local jurisdiction of such Magistrate, he might issue a summons or warrant.

Summons or warrant for offence committed beyond local jurisdiction.

158. The provisions relating to a summons, its issue and service, contained in this chapter, shall be applicable to every summons issued under this Act, except a summons to serve as a juror or assessor:

Provided that, when the person summoned is in the service of Government or of any Railway Company, the Court or Magistrate issuing the summons may send the summons to the head of the office in which the person summoned is employed; and such head shall thereupon cause the summons to be served on the person named therein.

Provisions in this chapter, as to form, service and issue of summons, applicable to all summonses.

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[a] See *Fort St. George Gazette*, 1873, p. 717: *Bombay Government Gazette*, 1872, p. 1325, *ibid.*, 1873, p. 16: *Panjáb Gazette*, 1873, p. 75: *Oudh Gazette*, 1873, p. 3.

[b] *Read* 'a summons for the appearance or a warrant.'

[c] *For* 'and for which if' *read* 'provided that if it were.'

CHAPTER XIII.—Of the Warrant.

Form of warrant.

159. Every warrant issued by a Magistrate shall be in writing, and shall be signed and sealed [a] by such Magistrate, and shall be in the form (B) given in the second schedule to this Act, or to the like effect.

Effect of warrant of arrest.

The warrant issued under this chapter remains in force until the person arrested is brought into the presence of the Magistrate who issued it, and so long as he remains before such Magistrate. If the person arrested is to be remanded to custody, an order must be made under section one hundred and ninety-four, or a warrant issued under section three hundred and three.

Magistrate may direct bail to be taken.

160. It shall be in the discretion of a Magistrate, in issuing a warrant for the arrest of any person, to direct by endorsement on the warrant that, if such person be willing and ready to give bail, in a sum to be fixed by the Magistrate, for his appearance before the Magistrate on a specified day [which sum and day shall be named in such endorsement], to answer the complaint, the officer to whom the warrant is directed shall accept such bail, and shall release from custody the person complained against.

Bail-bond to be forwarded.

If bail is given, the officer shall forward the bail-bond to the Magistrate.

Warrants to whom directed.

161. A warrant shall ordinarily be directed to a Police officer, but the Magistrate issuing a warrant may, if immediate execution be necessary and no Police officer be immediately available, direct it to any other person.

Warrant may be directed to landholders, &c.

162. The Magistrate of the District may direct a warrant or warrants to landholders, farmers or managers of land, for the arrest of any escaped convict, proclaimed offender, or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Such landholder or other person shall acknowledge the receipt of the warrant and shall be bound to execute it, should the person for whose arrest it was issued enter on or be in his estate, farm or land under his charge.

Should the person against whom such warrant is issued be arrested, he shall be made over to the nearest Police officer with the warrant, and such Police officer shall cause such accused person to be carried before the Magistrate having jurisdiction, unless bail may be and is taken under section one hundred and sixty.

Warrants directed to any person other than a Police officer.

163. When a warrant is directed to a person other than a Police officer, any other person may aid in executing such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

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[a] *Re Hastings* 9 Bomb. 157, a decision on the corresponding sec. (76) of Act No. XXV of 1861.

164. A warrant may be directed to several persons, and, when so directed, may be executed by all, or by any one or more of such persons. Warrant to several persons.

165. A warrant directed to a Police officer may also be executed by any other Police officer whose name is endorsed upon the warrant by the officer to whom the warrant is directed or endorsed. Warrant directed to Police officer.

166. The Magistrate by whom a warrant of arrest is issued may attend personally for the purpose of seeing that the warrant is duly executed. Magistrate issuing warrant may superintend its execution.

Any Magistrate may also at any time direct the arrest, in his presence, of any person for whose arrest he is competent to issue a warrant. Arrest in presence of Magistrate.

167. A warrant issued by a Magistrate shall ordinarily be executed in the district in which it was issued. Where warrant may be executed.

But if the person against whom the warrant is issued escapes, goes into, or is, in any place out of the district in which the warrant was issued, the warrant may be executed in such place.

168. A Magistrate may direct a warrant to be executed outside his local jurisdiction, either after endorsement by a Magistrate within whose local jurisdiction it is to be executed, or without such endorsement. Magistrate may issue warrant for execution in places outside his jurisdiction.

If the warrant is to be so endorsed, it may be sent by post to the Magistrate within whose local jurisdiction it is to be executed and by whom it is to be endorsed.

If the warrant is not to be endorsed, it shall be entrusted to a Police officer, to be taken, either to a Magistrate, or to a Police officer not below the rank of an officer in charge of a station, in whose local jurisdiction the warrant is to be executed. [a]

169. If a warrant is executed, whether with or without endorsement, outside the district in which it was issued, the person arrested shall, unless the Magistrate who issued the warrant be within twenty miles or be nearer than the Magistrate in whose local jurisdiction the arrest was made, or unless bail be taken under section one hundred and sixty, be carried before the Magistrate in whose local jurisdiction the arrest was made. Procedure on arrest of person against whom warrant was issued.

170. A Magistrate or Police officer to whom a warrant is directed for execution shall execute the same, or cause it to be executed, and any Magistrate before whom a person is brought under the provisions of section one hundred and sixty-nine shall, if the person arrested appears to be the person intended by the Magistrate who issued the warrant, direct his removal in custody to the Magistrate who issued the warrant, Procedure by Magistrate before whom arrested person is brought.

[a] *Bombay Government Gazette*, 1873, p. 439.

or, if the offence be bailable, and the person arrested be ready and willing to give bail, shall take bail for his appearance before the Magistrate who issued the warrant, and the recognizance or bail-bond shall be forwarded to such Magistrate.[a]

In this section the word "Magistrate" includes a Commissioner of Police and a Magistrate of Police in the Presidency towns.

Proclamation for person absconding.

171. If any person accused of an offence not coming within section one hundred and forty-eight absconds or conceals himself, so that, upon a warrant issued against him, he cannot be found, the Magistrate having jurisdiction shall, if he thinks, whether after taking evidence or not, that such person absconds or conceals himself for the purpose of avoiding the service of the warrant, issue a written proclamation, requiring him to appear to answer the complaint within a fixed period not less than thirty days.[b]

Such proclamation shall be publicly read in some conspicuous place of the town or village in which the accused person usually resides, and shall be affixed on some conspicuous part of his ordinary place of abode, or on some conspicuous place of such town or village.

A copy of the proclamation shall also be affixed on some conspicuous part of such Magistrate's Court-house.

A statement by the Magistrate to the effect that the proclamation was duly made shall be conclusive evidence of due compliance with the law.

Attachment of property of person absconding.

172. Such Magistrate may order the attachment of any property, moveable or immoveable, or both, belonging to the person so absconding or concealing himself.

Such order shall authorize the attachment of any property within the jurisdiction of the Magistrate of the District in whose district it is made; and it shall authorize the attachment of any property without the jurisdiction of the Magistrate of the District, when endorsed by the Magistrate of the District in which such property is situated.

The attachment under this section shall, if the property ordered to be attached be land paying revenue to Government, be made through the Collector of the District in which the land is situate, and, in all other cases, by seizure under the order of the Magistrate having jurisdiction; or by the appointment of a manager and receiver, or by an order prohibiting the payment of rent to the absent person, as such Magistrate deems proper.

If the absent person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Govern-

[a] *Bombay Government Gazette*, 1873, p. 439.
[b] from the date of publishing the proclamation, 10 Beng. Appendix, 18.

ment, but shall not be sold until the expiration of six months, unless it is of a perishable nature, or such Magistrate considers that the sale would be for the benefit of the owner.

Restoration of forfeited property.

173. When any person whose property has come under the disposal of Government under section one hundred and seventy-two appears or is found within two years after the attachment of the property, and proves to the satisfaction of the Court of Session or High Court trying him for the offence of which he was accused, or, if he is not tried in, or committed for trial for that offence to, either of those Courts, to the satisfaction of the Magistrate of the District, that he did not abscond or conceal himself for the purpose of evading justice, such property, or if the same has been sold, the proceeds thereof, shall be restored to him.

Magistrate's procedure on arrest, under his own warrant, for offence committed out of his jurisdiction.

174. On the arrest of a person for whose apprehension a warrant has been issued[a] under the provisions of section one hundred and fifty-seven, in respect of an offence known or suspected to have been committed in another District or Division of a District, the Magistrate who issued the warrant shall, unless he is authorized to complete the inquiry himself, send the person arrested to the Magistrate within the limits of whose jurisdiction the offence is known or suspected to have been committed, or shall take bail for his appearance before such Magistrate, if the offence of which such person is suspected is bailable.

When the Magistrate who issued the warrant cannot satisfy himself as to the Magistrate to whom the person arrested should be sent, the case shall be reported for the orders of the High Court.

Procedure where such warrant issued by Subordinate Magistrate.

175. If the arrest was made under a warrant issued under section one hundred and fifty-seven by a Magistrate other than the Magistrate of the District, such Magistrate shall send the person arrested to the Magistrate of the District, unless the Magistrate in whose jurisdiction the offence is suspected to have been committed issues his warrant for the arrest of such person; in which case the person arrested shall be delivered to the Police officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

If the offence of which the person arrested is suspected has been committed in the jurisdiction of another Subordinate Court of the same District, the Magistrate who issued the warrant under section one hundred and fifty-seven shall send the person arrested to the Magistrate of the Division of the District in which the offence was committed.

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[a] by the Magistrate of the District, apparently.

Notification of substance of warrant.

176. A Police officer or other person executing a warrant of arrest shall notify the substance of the warrant to the person to be arrested, and, if required to do so, shall show the warrant to such person.

Warrant how executed.

177. In making an arrest, the Police officer or other person executing the warrant shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Resisting endeavour to arrest.

178. If a person against whom a warrant of arrest is issued forcibly resists the endeavour to arrest him, the Police officer or other person executing the warrant may use all means necessary to effect the arrest.

Search of house entered by person against whom warrant issued.

179. If there is reason to believe that any person against whom a warrant has been issued has entered into, or is within, any house or place, it shall be the duty of any person residing in or in charge of such house or place, on demand of the Police officer or other person executing the warrant, to allow such Police officer or other person free ingress thereto, and to afford all reasonable facilities for a search therein.

Breaking of door or window.

180. The Police officer or other person authorized by warrant to arrest a person, may break open any outer or inner door or window of any house or place, whether that of the person accused or of any other person, in order to execute such warrant, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

Breaking open zanána.

181. If information be received that a person accused of any offence for which a warrant may issue is concealed in an apartment in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the Police officer or other person employed to execute the warrant shall take such precautions as may be necessary to prevent the escape of the accused person.

If the accused person does not deliver himself up, the Police officer or other person authorized to execute the warrant may notify his authority and purpose, and demand admittance.

If after such notification and demand he cannot otherwise obtain admittance, he shall give notice to any woman as aforesaid in such apartment, not being a person against whom a warrant has been issued, that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and execute the warrant.

No unnecessary restraint

182. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.[a]

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[a] See Act No. V of 1861, s. 29.

183. The officer or other person executing the warrant shall, without unnecessary delay, bring the person arrested before the Magistrate before whom he is required by this Act to produce him.

Person arrested to be brought before Magistrate.

184. No Police officer or other person shall offer to the person arrested any inducement, by threat or promise or otherwise, to make any disclosure.[a]

Inducements to disclosure or confession.

But no Police officer or other person shall prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

185. The provisions relating to a warrant and its execution, contained in this chapter, shall be applicable to every warrant of arrest issued under this Act.

Provisions as to warrant and its execution and issue applicable to all warrants of arrest.

PART V.

OF INQUIRIES AND TRIALS.

CHAPTER XIV.—PRELIMINARY.

186. Every person[b] accused in any Criminal Court of an offence may of right be defended by any barrister or attorney of a High Court, or by any pleader duly qualified under the provisions of Act No. XX of 1865, or any other law in force for the time being relating to pleaders.

Right of accused to be defended.

Any such person may, with the permission of the Court (but not otherwise), employ any mukhtár or other person, not being a barrister, attorney or pleader, to assist him in his defence.[c]

If an accused person, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and if such inquiry results in a committal, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court, with a report of the circumstances of the case, and the High Court shall pass thereon such order as to it seems fit.

Where accused person does not understand the proceedings.

187. The place in which the Court of a Magistrate is held for the trial of any offence, or for the purpose of conducting an inquiry into any case triable by a Court of Session or High Court, and also every Court of Session and every High Court, shall be deemed an open and public Court, to which the public generally may have access, so far as the same can conveniently contain them.

Criminal Courts to be open.

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[a] See sec. 120 *supra*.
[b] Act No. XI of 1874, section 13.
[c] Saved, Act No. XVII of 1875, s. 87.

But the Magistrate or presiding Judge may, if he thinks fit, order that, during the inquiry into or trial of any particular case, no person shall have access to, or be, or remain in, the room or building used by the Court, without the consent or permission of the Court.

Compounding offences

188. In the case of offences which may lawfully be compounded,[a] injured persons may compound the offence out of Court, or in Court with the permission of the Court.

Such withdrawal from the prosecution shall have the effect of an acquittal of the accused person.

CHAPTER XV.—Of Inquiry into Cases triable by the Court of Session or High Court.

Procedure in preliminary inquiries.

189. The following procedure shall be adopted in inquiries before Magistrates in cases triable by a Court of Session or High Court.

Examination of complainant and witnesses for prosecution.

190. When the accused person appears or is brought before the Magistrate, or, if his personal attendance is dispensed with, when the Magistrate thinks fit, the Magistrate shall take the evidence of the complainant, and of such persons as are stated to have any knowledge of the facts which form the subject-matter of the accusation and the attendant circumstances.

Examination to be in presence of accused.

191. The complainant and the witnesses for the prosecution shall be examined[b] in the presence of the accused person or of his agent, when his personal attendance is dispensed with and he appears by agent.

Accused may cross-examine.

The accused person or his agent shall be permitted to examine and re-examine his own witnesses, and to cross-examine the complainant and his witnesses.

Power of Magistrate to summon and examine any person

192. The Magistrate may, at any stage of the proceedings, summon and examine any person whose evidence he considers essential to the inquiry, and re-call and re-examine any person already examined.

Examination of accused.

193. The Magistrate may from time to time, at any stage of the inquiry and without previously warning the accused person, examine him, and put such questions to him as he considers necessary.

The accused person shall not render himself liable to punishment for refusal to answer such questions, or for giving false answers to them, but the Magistrate shall draw such inference as may to him seem just from such refusal.[c]

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[a] See the Exception and Illustrations to Act No. XLV of 1860, s. 214.
[b] See sec. 331 *infra* and Act No. X of 1873, s. 5.
[c] See Act No. I of 1872, s. 114, ill. (*h*).

EXPLANATION.—The answer given by an accused person may be put in evidence against him, not only in the case under inquiry, but also in trials for any other offences which his replies may tend to show he has committed.

Adjournment of inquiry and remand.

194. If, from the absence of a witness or from any other reasonable cause, it becomes necessary or advisable to defer the examination, or further examination, of witnesses, the Magistrate may, by a written order, from time to time adjourn the inquiry and remand the accused person for such time as is deemed reasonable, not exceeding fifteen days.

Instead of detaining the accused person in custody during the period for which he is so remanded, the Magistrate may release him, upon his entering into a recognizance, with or without a surety or sureties, at the discretion of such Magistrate, conditioned for his appearance before such Magistrate at the time and place appointed for the continuance of such examination.

EXPLANATION.—After commencing the inquiry, if sufficient evidence has been obtained to raise a suspicion that the person accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable ground for a remand.

When accused person to be discharged.

195. When a Magistrate finds that there are not sufficient grounds for committing the accused person to take his trial before the Court of Session or High Court, or for remanding him, he shall discharge him, unless it appears to the Magistrate that such person should be put on his trial before himself, in which case he shall proceed under chapters XVI, XVII or XVIII of this Act.

EXPLANATION I.—The absence of the complainant, except when the offence may lawfully be compounded,[a] shall not be deemed sufficient ground for a discharge, if there appear other evidence of a nature rendering a trial desirable.

EXPLANATION II.—A discharge is not equivalent to an acquittal, and does not bar the revival of a prosecution for the same offence.

EXPLANATION III.—An order of discharge[b] shall not ordinarily be made until the evidence of the witnesses named for the prosecution has been taken.

When accused is to be committed for trial.

196. When evidence has been given before a Magistrate, which appears to justify him in sending the accused person to take his trial for an offence which is triable exclusively by the Court of Session or High Court,[c] or which, in the opinion of the Magistrate, is one which ought to be tried by such Court, the accused person shall be sent for trial by such Magistrate before the Court of Session or High Court, as the case may be.

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[a] See the Exception and Illustrations to Act No. XLV of 1860, s. 214.
[b] Act No. XI of 1874, section 14.
[c] See sec. 75 *supra*.

When commitment to be to a High Court.

197. If such accused person (not being a European British subject) is accused of having committed an offence conjointly with a European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge, and the evidence appears to justify the Magistrate in sending the accused person for trial, he shall commit such accused person to take his trial before such High Court, and not before a Court of Session; and such High Court shall have jurisdiction to try such person.

EXPLANATION.—A commitment once made by a competent Magistrate[a] can be quashed by the High Court only, and only on a point of law.

This explanation applies also to section one hundred and ninety-six.

Contents of charge.

198. When the Magistrate determines to send the accused person before the Court of Session or High Court for trial, he shall, after the evidence has been recorded, make a written instrument under his hand and seal, declaring with what offence the accused person is charged, and shall direct him to be tried by such Court on such charge. He shall also record his reasons for committing such accused person.

Copy of charge to be sent to Court of Session.

A copy of such instrument shall be forwarded, with the record of the original inquiry, to the Court of Session before which the accused person is to be tried; and a copy shall also be sent to the public prosecutor or other officer appointed to conduct the prosecution.

Any weapon or other article of property necessary to produce in evidence shall also be transmitted to the Court of Session.

When a commitment is made to the High Court, such instrument, record, and such weapon or other article, shall be forwarded to the Clerk of the Crown or other officer appointed by the Court; and if any part of such record is not in English, a translation thereof in English shall be forwarded therewith.

Copy of charge to be furnished to accused.

199. As soon as the charge on which the accused person is to be tried has been prepared, it shall be read and explained to him; and a copy or translation thereof shall be furnished to him, if he so require.

List of witnesses for defence on trial.

200. The accused person shall be required at once to give in, orally or in writing, a list of witnesses whom he wishes to be summoned to give evidence on his trial before the Court of Session or High Court.

The Magistrate may, if he thinks proper, summon the persons so named to attend and give evidence at the inquiry; and if he does so, the commitment shall not be considered to have been made until such evidence has been taken.

Further list.

It shall be in the discretion of the Magistrate, subject to the provisions of section three hundred and fifty-nine, to allow the accused person to give in any further list of witnesses at a subsequent time.

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[a] See secs. 72, 75, 143 *supra*.

201. When the inquiry is concluded, the accused person shall, if he demands them at a reasonable time before the trial, be furnished with copies of the depositions. Such copies shall be made at his expense, unless the Magistrate sees fit to give them free of cost.

Copies of depositions to be furnished to accused.

202. When the accused person is committed to take his trial before the Court of Session or High Court, the Magistrate shall issue an order to the public prosecutor, Government pleader or other person appointed by the Government to conduct prosecutions before the Court of Session or High Court, notifying such commitment, and stating the offence in the same form as the charge, [a] unless the Magistrate is satisfied that such Government pleader or other person is already aware of the commitment and the form of the charge.

When commitment made, Magistrate to give notice to Government prosecutor.

Nothing in this section shall preclude the Magistrate of the District, in a case committed to the Court of Session, if he thinks fit, from appointing a person other than such Government pleader or person to conduct the prosecution.

CHAPTER XVI.—Of the Trial of Summons Cases by Magistrates.

203. The following procedure shall be observed in the trial of summons cases.

Procedure in summons cases.

No formal charge need at any time be made against the accused person, and neither the complaint nor the summons shall be regarded otherwise than as notice to the accused person of the facts to be inquired into. The Magistrate may convict the accused person of any offence (coming under this chapter) which, from the facts proved, he appears to have committed, whatever may be the nature of the complaint or summons.

Object and effect of complaint.

No defect in the complaint or summons shall affect the validity of the proceedings, unless it appears that the accused person was actually misled by such defect; and, in considering whether or not he was so misled, the Court shall have regard to the manner in which the accused person conducted his defence.

Defect in complaint or summons.

204. If, upon the day appointed, the accused person appears voluntarily in obedience to the summons in that behalf served upon him, or is brought before the Magistrate by virtue of a warrant or otherwise, it shall be at the discretion of the Magistrate to admit him to bail, or allow him to be at large upon his personal recognizance, as the Magistrate directs.

Accused person may be admitted to bail, or allowed to be at large on his personal recognizance.

If the accused person cannot give bail when required to do so, he shall be committed to custody.

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[a] Act No. XI of 1874, section 15.

Non-appearance of complainant.

205. If upon the day appointed for the appearance of the accused person, or any day subsequent thereto on which the case may be called on, the complainant does not appear, the Magistrate shall dismiss the complaint,[a] unless for some reason he thinks proper to adjourn the hearing of the same to some other day. Such adjournment shall be made upon such terms as the Magistrate thinks fit.

Substance of complaint to be stated.

206. On the appearance of both parties on the day fixed for the trial, the substance of the complaint shall be stated to the accused person, and he shall be asked if he has any cause to show why he should not be convicted.

Conviction on admission of truth of complaint.

If the accused person admit the truth of the complaint, his admission shall be recorded, and if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly of such offence (coming under this chapter) as he may appear to have committed.

Procedure when no such admission is made.

207. If the accused person does not admit the truth of the complaint, the Magistrate shall proceed to hear the complainant and such witnesses as he produces in support of his complaint, and also to hear the accused person and such witnesses as he produces in his defence.

Adjournment.

208. Before or during the hearing of any complaint, the Magistrate may, in order to secure the attendance of witnesses or for any other reason, adjourn the hearing of the same to a day to be then appointed and stated in the presence and hearing of the party or parties.

If on the day to which such hearing or such further hearing has been so adjourned, the accused person does not appear, the Magistrate may issue his warrant for the arrest of such person.

If the complainant does not appear, the Magistrate may dismiss the complaint.

Compensation in cases of frivolous or vexatious complaints.

209. A Magistrate may dismiss the complaint as frivolous or vexatious, and may, in his discretion, by his order of dismissal, award that the complainant shall pay to the accused person such compensation, not exceeding fifty rupees, as to such Magistrate seems just and reasonable.

In such cases, if more persons than one are accused in the complaint, the Magistrate may, in like manner, award compensation not exceeding fifty rupees to each of them.

Recovery of such compensation.

The sum so awarded shall be recoverable by distress and sale of the moveable property belonging to the complainant, which may be found within the jurisdiction of the Magistrate of the District; and such order shall authorize the distress and sale of any moveable property belonging to the complain-

[a] See sec. 212 *infra*.

ant without the jurisdiction of the Magistrate of the District, when the order has been endorsed by the Magistrate of the District in which such property is situated, and, if the sum awarded cannot be realized by means of such distress, by imprisonment of the complainant in the civil jail, for any time not exceeding thirty days, unless such sum is sooner paid.

Withdrawal of complaint.

210. If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw it.[a]

A complaint withdrawn under this section shall not again be entertained.

Acquittal.

211. If the Magistrate, in any case tried under this chapter, finds the accused person not guilty, he shall record a judgment of acquittal.

Sentence.

If the accused person is convicted, the Magistrate shall pass sentence upon him according to law.

When the personal attendance of the accused person during the trial has been dispensed with, the sentence of the Magistrate, if the sentence be for fine only, may be pronounced in the presence of such accused person's agent, if he has been permitted to appear by agent; or the accused person may be required to attend to hear such sentence.

Effect of dismissal.

212. The dismissal of a complaint under this chapter shall operate in like manner as the acquittal of the accused person.

No complaint shall be dismissed under the provisions of this chapter, except in so far as it refers to a summons case.

CHAPTER XVII.—Of the Trial of Warrant Cases by Magistrates.

Procedure in warrant cases.

213. The following procedure shall be observed by Magistrates in the trial of warrant cases.

Sections 190 to 194 to apply.

214. The provisions of sections one hundred and ninety to one hundred and ninety-four (both inclusive) shall apply to trials conducted under this chapter.

Discharge of accused.

215. When the evidence of a complainant and of the witnesses for the prosecution, and such examination of the accused person as the Magistrate considers necessary, have been taken, the Magistrate, if he finds that no offence has been proved against the accused person, shall discharge him.

Explanation I.—The absence of the complainant, except where the offence may be lawfully compounded,[b] shall not be deemed sufficient ground for a discharge, if there appears other evidence sufficient to substantiate the offence.

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[a] See sec. 188 *supra*

[b] See the Exception and Illustrations to Act No. XLV of 1860, s. 214.

EXPLANATION II.—A discharge is not equivalent to an acquittal, and does not bar the revival of a prosecution for the same offence.

EXPLANATION III.—An order of discharge cannot be passed until the evidence of the witnesses named for the prosecution has been taken.

Charge to be drawn when offence is apparently proved.

216. If the Magistrate finds that an offence is apparently proved against the accused person, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall prepare in writing a charge against the accused person.

EXPLANATION I.—The omission to prepare a charge shall not invalidate the trial, if, in the opinion of the Court of appeal or revision, no failure of justice has been occasioned thereby.

EXPLANATION II.—If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to prepare a charge, it shall order the trial to be recommenced from the point at which the charge should have been drawn up.

[a] EXPLANATION III.—The charge shall be prepared as soon as the Magistrate is of opinion that a *primâ facie* case has been established against the accused person, although the whole of the evidence for the prosecution may not have been completed.

Plea.

217. The charge shall then be read and explained to the accused person, and he shall be asked whether he is guilty or has any defence to make.

Defence.

218. If the accused person have any defence to make to the charge, he shall be called upon to enter upon the same, and to produce his witnesses if in attendance, and shall be allowed to recall and cross-examine the witnesses for the prosecution.

If the accused person puts in any written statement, the Magistrate may file it with the record, but shall not be bound to do so.

Evidence for defence.

219. The Magistrate shall, subject to the provisions of section three hundred and sixty-two, summon any witness and examine any evidence that may be offered in behalf of the accused person, to answer or disprove the evidence against him, and may for this purpose, at his discretion, adjourn the trial from time to time as may be necessary.

Acquittal

220. If the Magistrate finds the accused person not guilty, he shall record judgment of acquittal.

Conviction.

If the accused person is convicted, the Magistrate shall pass sentence upon him according to law.

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[a] Act No. XI of 1874, section 16.

EXPLANATION.—If a charge is drawn up, the prisoner must either be acquitted or convicted. If no charge is drawn up, there can be no judgment of acquittal or conviction, except in the case provided for in Explanation I to section two hundred and sixteen.

Procedure when, after commencement of trial, Magistrate finds case beyond his jurisdiction.

221. In any trial before a Magistrate, in which it may appear at any stage of the proceedings that from any cause the case is one which the Magistrate is not competent to try, or one which, in the opinion of such Magistrate, ought to be tried by the Court of Session or High Court, the Magistrate shall stop further proceedings under this chapter, and shall, when he either cannot or ought not to make the accused person over to an officer empowered under section thirty-six, commit the prisoner under the provisions hereinbefore contained. If such Magistrate is not empowered to commit, he shall proceed under section forty-five.

CHAPTER XVIII.—OF SUMMARY TRIALS.

What offences may be tried summarily.

222. The Magistrate of the District may try the following offences in a summary way, and, on conviction of the offender, may pass such sentence as may be lawfully inflicted under section twenty of this Code:—

(1). Offences referred to in section one hundred and forty-eight of this Code:

(2). Offences relating to weights and measures, under sections two hundred and sixty-four, two hundred and sixty-five and two hundred and sixty-six of the Indian Penal Code:

(3). Hurt, under section three hundred and twenty-three of the Indian Penal Code:

(4). Theft, under section three hundred and seventy-nine of the Indian Penal Code, where the value of the property stolen does not exceed fifty rupees:

(5). Theft, under section three hundred and eighty of the Indian Penal Code, where the value of the property stolen does not exceed fifty rupees:

(6). Theft, under section three hundred and eighty-one of the Indian Penal Code, where the value of the property stolen does not exceed fifty rupees:

(7). Receiving stolen property, under section four hundred and eleven of the Indian Penal Code:

(8). Mischief, under section four hundred and twenty-seven of the Indian Penal Code:

(9). House-trespass, under section four hundred and forty-eight of the Indian Penal Code:

[a] (10). Insult with intent to provoke a breach of the peace under section five hundred and four, and criminal intimidation under section five hundred and six, of the Indian Penal Code:

(11). Abetment of, or attempt to commit (when such attempt is an offence), any of the foregoing offences.

Power to invest Magistrates with power to try summarily.

223. The Local Government may invest any Magistrate of the First Class with power to try summarily all or any of the offences mentioned in section two hundred and twenty-two.

Power to invest Bench of first class Magistrates with summary powers.

224. The Local Government may invest any Bench of Magistrates invested with the powers of a Magistrate of the First Class with power to try summarily all or any of the offences mentioned in section two hundred and twenty-two.

Power to invest Bench of inferior Magistrates with summary powers.

225. The Local Government may invest any Bench of Magistrates invested with the powers of a Magistrate of the Second or Third Class with power to try summarily all or any of the following offences:—

Offences coming within sections two hundred and seventy-seven, two hundred and seventy-eight, two hundred and seventy-nine, two hundred and eighty-five, two hundred and eighty-six, two hundred and eighty-nine, two hundred and ninety, two hundred and ninety-two, two hundred and ninety-three, two hundred and ninety-four, three hundred and twenty-three, three hundred and thirty-four, three hundred and thirty-six, three hundred and forty-one, three hundred and fifty-two, four hundred and twenty-six and four hundred and forty-seven of the Indian Penal Code; any offences against Municipal Acts, and the Conservancy clauses of Police Acts, punishable with fine, or with imprisonment not exceeding one month.

Procedure in trials under this chapter.

226. In trials under this chapter, the provisions of this Code in regard to summons cases shall be followed in respect of summons cases, and the procedure for warrant cases in respect of warrant cases, with the exceptions hereinafter provided.

Entries in cases where there is no appeal.

227. In cases where no appeal lies,[b] the Magistrate or Bench of Magistrates need not record the evidence of the witnesses, nor the reasons for passing the judgment, nor draw up a formal charge, but he or they shall enter, in a register to be kept for the purpose, the following particulars:—

(*a*). The serial number;

(*b*). The date of the commission of the offence;

(*c*). The date of the report or complaint;

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[a] Act No. XI of 1874, section 17.

[b] See sec. 274 *infra*.

(*d*). The name of the complainant;

(*e*). The name, parentage and residence of the accused person;

(*f*). The offence complained of or proved;

(*g*). The prisoner's plea;

(*h*). The finding, and, in the case of a conviction, a brief statement of the reasons therefor;

(*i*). The sentence; and

(*j*). The date on which the proceedings terminated.

Record in appealable cases.

228. If a Magistrate or Bench of Magistrates, acting under section two hundred and twenty-two, two hundred and twenty-three or two hundred and twenty-four, passes a sentence of more than three months' imprisonment, or of fine exceeding two hundred rupees;

or if a Bench of Magistrates, acting under section two hundred and twenty-five, convicts any person,

such Magistrate or Bench of Magistrates shall, before passing sentence, record a judgment embodying the substance of the evidence on which the conviction was had, and also the particulars mentioned in section two hundred and twenty-seven.

Such judgment shall be the only record in cases coming within this section.

Language of entries under s. 227 and of judgment under s. 228.

229. Records made under section two hundred and twenty-seven and judgments recorded under section two hundred and twenty-eight, shall be written by the presiding officer, either in English or in the language of the district in which the trial was held, or, by direction of the Court to which such presiding officer is immediately subordinate, in the language of the presiding officer.

Bench of Magistrates may be authorized to employ clerk.

230. The Local Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer of such Court, and the record or judgment so prepared shall be signed by each member of such Bench present, conducting the proceedings.

CHAPTER XIX.—Trial by Court of Session.

Cognizance of offences by Court of Session in its original jurisdiction.

231. No Court of Session shall take cognizance of any offence, as a Court of original criminal jurisdiction, unless the accused person has been committed by a Magistrate duly empowered in that behalf, except in the cases referred to in[a] section thirty-three, section four hundred and thirty-five, section four hundred and seventy-two, or section four hundred and seventy-four.

[a] Act No. XI of 1874, section 18.

Trials to be by jury or with assessors.

232. All trials before the Court of Session shall be either by jury, or conducted with the aid of two or more assessors.

Local Government may order trials before Court of Session to be by jury.

233. The Local Government may order that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury, in any district; and such Local Government may from time to time revoke or alter such order.

Orders passed under this section shall be published in the official Gazette,[a] and in such other manner as the Local Government from time to time directs.

EXPLANATION.—If an offence triable with assessors is tried by a jury, the trial shall not on that ground merely be invalid. If an offence triable by a jury is tried with assessors, the trial shall not on that ground merely be invalid, unless objection be taken before the Court records its finding.

Jury for trial of Europeans (not being British subjects) or Americans.

234. Criminal trials before the Court of Session, in which a European (not being a European British subject) or an American is the accused person, or one of the accused persons, shall be by jury.

In such case the jury, if such European or American desire it, shall consist of at least one-half of Europeans, whether European British subjects or not, or Americans, if such a jury can be procured:

Election to be tried without jury.

Provided that, in any district in which the Local Government has not ordered that all trials before the Court of Session, or trials for all offences of the class within which the trial about to take place falls, shall be by jury, such European or American may elect to be tried without jury.

Trial before Court of Session to be conducted by Public Prosecutor.

235. In every trial before a Court of Session, the prosecution shall be conducted by the Public Prosecutor, Government Pleader, or by some other officer specially empowered by the Magistrate of the District in that behalf.[b]

Number of jury.

236. In trials by jury before the Court of Session, the jury shall consist of such uneven number, not being less than three nor more than nine, as the Local Government, by any general order applicable to any particular district or to any particular classes of offences in that district, directs.[c]

Commencement of trial.

237. When the Court is ready to commence the trial, the accused person shall be brought before it, and the charge shall be read and explained to him,

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[a] See *Calcutta Gazette*, 8th January 1862, p. 87: 28th May 1862, p. 2041: 15th October 1862, p. 3416: 5th April 1862, p. 1286: *Bombay Government Gazette*, 11th Dec. 1873, p. 1008: *British Burma Gazette*, 25th Dec. 1875, part II, p. 233.

[b] 11 Bomb. 102.

[c] See *Calcutta Gazette*, 1873, pp. 152, 741: *Fort St. George Gazette*, 1873, p 718: *Bombay Government Gazette*, 1873, p. 129: *N.-W. Provinces Gazette*, 23rd August 1873, p. 1042: *Panjáb Gazette*, 30th January 1873, p. 76: *Central Provinces Gazette*, 25th January 1873, part I A, p. 18.

and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

If the accused person pleads guilty, the plea shall be recorded, and he may be convicted thereon. Plea of guilty.

238. If the accused person refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed, and to try the case. Refusal to plead or claim to be tried.

239. When the trial is to be with assessors, the assessors shall be chosen, as the Judge thinks fit, from the persons summoned to act as assessors. Assessors how chosen.

240. When the trial is to be by jury, the jury shall be chosen by lot from the persons summoned to act as jurors. Jurors how chosen.

241. In a trial by jury, before the Court of Session, of a person not being a European or an American, at least one-half of the jury shall, if the accused person desire it, consist of persons who are neither Europeans nor Americans. Jury for trial of persons not Europeans or Americans.

242. In any case before the Court of Session, in which a European or American is charged jointly with a person of any other race, such other person shall, if he desire it, be tried separately, if the European or American claims to be tried by a jury consisting of at least one-half of Europeans and Americans. Jury when European or American charged jointly with one of another race.

243. As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused person shall be asked if he objects to be tried by such juror. Names of jurors to be called.

Objection may then be made to such juror by the accused person, or by the Public Prosecutor, Government Pleader, or other person appointed to conduct the prosecution, and the grounds of objection shall be stated. Objections to jurors.

Any objection made to a juror shall be decided by the Court, and the decision of the Court shall be final.

If an objection be allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons; or, if there be no such juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided no objection to such juror or other person be made and allowed. Procedure where objection allowed

244. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:— Grounds of objection.

(1) any ground of disqualification within section four hundred and five;

(2) standing in the relation of husband, master or servant, landlord or tenant, to the person alleged to be injured or attempted to be injured by the

offence charged, or to the person on whose complaint the prosecution was instituted, or to the person accused;

(3) being in the employment of any of such persons;

(4) being plaintiff or defendant against any of such persons in any civil suit;[a]

(5) having complained against, or having been accused by, any of such persons in any criminal prosecution;

(6) any circumstance which, in the judgment of the Court, is likely to cause prejudice against, or favour to, any of such persons, or which renders such person improper as a juror.

Juror to understand the language in which evidence is given or interpreted.

245. The Judge shall not allow any person to serve on the jury, unless such person understands the language in which the evidence is given or interpreted.

Foreman of jury.

246. When the jury has been completed, they shall appoint one of their number to be foreman.

It shall be the duty of the foreman to preside in the debates of the jury, to deliver the verdict of the jury, and to ask any information from the Court that may be required by the jury.

If a majority of the jury do not agree in the appointment of a foreman, he shall be named by the Court.[b]

Examination of witnesses.

247. [c] The person conducting the prosecution shall then open his case, and the witnesses shall then be examined, cross-examined and re-examined according to the law for the time being relating to the examination of witnesses.[d]

Examination of accused before committing Magistrate.

248. The examination of the accused person before the committing Magistrate shall be given in evidence at the trial.[e]

Evidence given before committing Magistrate.

249. [f] When a witness is produced before the Court of Session or before the High Court in the exercise of its original or appellate criminal jurisdiction, the evidence given by him before the committing Magistrate may, in the discretion of the presiding Judge,[g] be treated as evidence in the case, if it was duly taken in the presence of the accused person.

EXPLANATION.—This section shall not authorize the Court to refer to the record of the evidence given by a witness who is absent, except in the cases in

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[a] Read 'being plaintiff or defendant in any civil suit against any of such persons.'
[b] The jurors are sworn or affirmed, Act No. X of 1873, s 5, cl. (*c*).
[c] Act No. XI of 1874, section 19.
[d] See Act No. I of 1872, ss. 137–166.
[e] See Act No. I of 1872, s. 80.
[f] Act No. XI of 1874, section 20.
[g] 11 Bomb 281.

which such evidence may be referred to under the Indian Evidence Act, 1872, or other law in force for the time being upon the subject of evidence.

Examination of accused.

250. The Court may from time to time, at any stage of the trial, examine the accused person, and shall question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

Defence.

251. When the examination of the witnesses for the prosecution and the examination of the accused person is concluded, the accused person shall be asked whether he means to call witnesses. If he says that he does not, the prosecutor [a] may sum up his case. The Court may then, if it thinks that there are no grounds for proceeding,

in a case tried with assessors, record a finding, or,

in a case tried by a jury, instruct the jury to return a verdict of acquittal.

If the Court considers that there are grounds for proceeding, it shall call on the accused person to state his grounds of defence and produce his witnesses.

The accused person, or his Counsel or authorized agent, may then state the case for the defence, and may examine the witnesses, if any, produced for the defence, and at the conclusion of such examination may sum up his case.

Prosecutor's right of reply.

252. If any evidence is adduced on behalf of the accused person, the officer conducting the prosecution[a] shall be entitled to reply.

View by jury or assessors.

253. Whenever, in the opinion of the Court, it is proper and convenient that the jury or assessors should view the place in which the offence charged is said to have been committed, or any other place in which any other transaction material to the inquiry in the trial took place, an order shall be made to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

Such officer shall not suffer any other person to speak to, or hold any communication with, any of the jury or assessors; and they shall, when the view is finished, be immediately conducted back into Court.

Procedure when juror becomes unable to attend.

254. If, in the course of a trial by jury, at any time prior to the finding, any juror, from any sufficient cause, is prevented from attending through the trial,

or if any juror absents himself, and it is not possible to enforce his attendance,

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[a] The assistance of Counsel is not meant to be excluded, 11 Bomb 103.

a new juror shall be added, or the jury shall be discharged and a new jury empannelled,

and in either case the trial shall commence anew.

Assessors' opinion, and charge to jury.

255. When the case for the defence and the prosecutor's reply, if any, are concluded, the Court shall proceed—

in cases tried with assessors, to ask the assessors their opinion, and shall record it:

in cases tried by jury, to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

A statement of the Judge's direction to the jury shall form part of the record.

Duty of Judge.

256. It is the duty of the Judge to decide all questions of law, and especially all questions as to the relevancy of facts which it is proposed to prove, the admissibility of evidence, or the propriety of questions asked by parties or their agents, which may arise in the course of the trial; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

to decide upon the meaning and construction of all documents given in evidence at the trial;

to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

to decide whether any question which arises is for himself or for the jury; and upon this point his decision shall be final.

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.[a]

Illustrations.

(*a.*) It is proposed to prove a statement made by a person not called as a witness, under circumstances which render evidence of his statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(*b.*) It is proposed to give secondary evidence of a document, the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

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[a] 10 Beng Appendix, 38.

257. It is the duty of the jury— Duty of jury

(1) to decide which view of the facts is true, and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned;

(2) to determine the meaning of all technical terms and words used in an unusual sense, which it may be necessary to determine, whether such words occur in documents or not;

(3) to decide all questions declared by the Indian Penal Code, or any other law, to be questions of fact;

(4) to decide whether general, indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(*a*.) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(*b*) The question is, whether a person entertained a reasonable belief on a particular point. Whether work was done with reasonable skill, or due diligence.

Each of these is a question for the jury.

258. If a juryman or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be examined, cross-examined and re-examined, in the same manner as any other witness. When juryman or assessor may be examined.

259. If, in the course of a trial with the aid of assessors, at any time prior to the finding, any assessor is, from any sufficient cause, prevented from attending through the trial, the trial shall proceed with the aid of the other assessor or assessors. Procedure when assessor is unable to attend.

If all the assessors are prevented from attending through the trial, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh assessors.

260. If a trial is adjourned, the jury or assessors shall be required to attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial. Jury or assessors to attend at adjourned sitting.

Cases tried with assessors.

261. In cases tried with assessors, the Court shall proceed to pass judgment of acquittal or conviction, having considered the opinions of the assessors, but not being bound to conform to them. If the accused person is convicted, the Court shall proceed to pass sentence on him according to law.

Decision vested in Judge.

262. The opinion of each assessor shall be given orally and shall be recorded in writing by the Court; but the decision is vested exclusively in the Judge.

Cases tried by juries.

263. In cases tried by jury, the jury may retire to consider their verdict. It shall be the duty of an officer of the Court not to suffer any person [a] to speak to, or hold any communication with, any member of such jury. When the jury have considered their verdict, the foreman shall inform the Court what is their verdict, or what is the verdict of a majority.

Verdict to be given on each charge Judge may question jury.

The jury shall return a verdict on all the charges on which the accused is tried, and the Court may ask them such questions as are necessary to ascertain what their verdict is. Such questions and the answers to them shall be recorded.

Procedure where jury differ.

If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

If the Court does not think it necessary to dissent from the verdict [b] of the jurors or of a majority of the jurors, it shall give judgment accordingly. If the accused person is acquitted, the Court shall record judgment of acquittal. If the accused person is convicted, the Court shall proceed to pass sentence on him according to law.

[c]If the Court disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the prisoner has been tried, and considers it necessary for the ends of justice to do so, it may submit the case to the High Court. If the Court does so, it shall not record judgment of acquittal or of conviction on any of the charges on which the prisoner has been tried; but it may either remand him to custody or admit him to bail.

The High Court shall deal with the case so submitted as it would deal with an appeal, but it may acquit or convict the accused person on the facts as well as law, without reference to the particular charges as to which the Court of Session may have disagreed with the verdict; and if it convict him, shall pass such sentence as might have been passed by the Court of Session.

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[a] other than a juror.
[b, c] Act No. XI of 1874, section 21.

264. The Court may, in its discretion, postpone the hearing of the case; and may, from time to time, adjourn the trial, if it considers that such adjournment is proper and will promote the ends of justice.

Postponement of trial. Adjournment.

265. The same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as to the Court seems fit.

Successive trials by same jury.

PART VI.

APPEAL, REFERENCE AND REVISION.

CHAPTER XX.—APPEALS.

266. Any person convicted on a trial held by any Magistrate of the Second or Third Class, or any person sentenced by a competent Magistrate of the Second Class under section forty-six, may appeal [a] to the Magistrate of the District, or to a Magistrate of the First Class who has been empowered by the Local Government to hear such appeals.

Appeals from officers exercising powers less than those of first class Magistrate.

267. Any person required by a Magistrate of the First Class to give security for good behaviour, under section five hundred and four or section five hundred and five, may appeal to the Magistrate of the District.

Appeals in bad livelihood cases.

268. Any person convicted by any Civil, Criminal or Revenue Court, under chapter XXXII of this Act, may appeal to the Court to which decrees or orders made in such Court are ordinarily appealable, whatever may be the amount of the sentence passed, subject to the rules provided in sections two hundred and seventy-five, two hundred and seventy-seven, two hundred and seventy-eight, two hundred and eighty, two hundred and eighty-one and two hundred and eighty-two.

Appeals from convictions in contempt cases.

An appeal from such conviction by a Small Cause Court may be made to the Court of Session within whose Sessions Division such Court is situate.

269. Any person convicted on a trial held by the Magistrate of the District or other Magistrate of the First Class, or any person sentenced under section forty-six by a competent Magistrate of the First Class, may appeal to the Court of Session.

Appeal from Magistrates.

The appellant shall, in every case, give notice of appeal to the Magistrate of the District, who shall, if necessary, instruct the Public Prosecutor, Government Pleader or other officer empowered by Government or by the Magistrate of the District to prosecute the case.

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[a] See the Limitation Act, No. IX of 1871, schedule II, Art. 152 and ss. 5 and 13.

Appeals by persons convicted by officers invested under section 36.

270. Any person convicted on a trial held by any officer invested with the power described in section thirty-six may appeal to the High Court, if it appear from the sentence awarded that such officer was in such trial exercising such special powers. No appeal in such case shall lie to the Court of Session.

Appeals from convictions of Assistant Sessions Judges.

Any person convicted by an Assistant Sessions Judge may appeal to the Sessions Judge, if the sentence appealed against does not exceed three years' imprisonment.

A sentence of an Assistant Sessions Judge, confirmed under section eighteen by the Sessions Judge, may be appealed to the High Court.

Appeal from sentence of Sessions Judge.

[a] **271.** Any person convicted on a trial held by a Sessions Judge may appeal to the High Court.[b]

An appeal may lie on a matter of fact as well as a matter of law, except where the conviction was in a trial by jury, in which case the appeal shall be admissible on a matter of law only.

Procedure in case of sentence of death.

[c] **271 A.** When any such person is sentenced to death, the Sessions Court shall give him a copy of the sentence and inform him that, if he wishes to appeal, his appeal must be made within seven days; and the Court shall delay the transmission of the reference hereinafter required for a reasonable time not exceeding seven days to allow of the appeal and reference being made at the same time.

When it appears that the execution of the sentence should not be delayed, the Sessions Court may forward the reference at once, recording its reasons for so doing.

Procedure where Judges of Court of appeal, &c., are equally divided.

[d] **271 B.** Where the Judges composing the Court of appeal, reference or revision are equally divided, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

No appeal in case of acquittal, except on behalf of Government.

272. The Local Government may direct an appeal by the Public Prosecutor or other officer specially or generally appointed in this behalf, from an original or appellate judgment of acquittal; but in no other case shall there be an appeal from a judgment of acquittal passed in any Criminal Court.

Such appeal shall lie to the High Court. [e] No appeal shall be prosecuted under this section after six months from the date of the judgment complained of.[f]

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[a] Act No. XI of 1874, section 22.
[b] See the Limitation Act, No. IX of 1871, schedule II, Art. 153.
[c, d] Act No. XI of 1874, section 22.
[e] Act No. XI of 1874, section 23.
[f] *Reg.* v. *Dorábji Bálábhái*, 11 Bomb. 117.

The High Court may, in any case so appealed, direct a new trial by another Court, or may pass such judgment, sentence or order as may be warranted by law.

No appeal against petty sentences of Sessions Court of Magistrate of First Class.

273. There shall be no appeal in cases in which a Court of Session, or the Magistrate of a District or other Magistrate of the First Class, passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

There shall be no appeal from a sentence of imprisonment passed by such Court or officer in default of payment of fine, when no substantive sentence of imprisonment has been passed.

Where an accused person has been convicted on his own plea, whether on a trial with assessors or by jury, there is no appeal, except as to the extent or legality of the sentence.

Appeals from summary convictions.

274. There shall be no appeal in cases tried summarily, in which a Magistrate of the District, or a Magistrate or Bench of Magistrates invested with the powers of a Magistrate of the First Class, empowered to act under section two hundred and twenty-two, two hundred and twenty-three or two hundred and twenty-four, passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

An appeal may be brought against any sentence referred to in section two hundred and seventy-three or two hundred and seventy-four, by which any two or more of the punishments therein mentioned are combined; *but not against a sentence in which imprisonment is awarded in default of payment of fine and in addition thereto;* [a]

nor against any sentence which would not otherwise be liable to appeal because the person convicted is ordered to find security to keep the peace.

Saving of sentences on European British subjects.

The provisions of this and the last preceding section shall not apply to appeals from orders passed on European British subjects under section seventy-four or seventy-six.

[b] EXPLANATION.—A sentence by which imprisonment is awarded in default of payment of fine, is not a sentence by which two or more punishments are combined, within the meaning of the second clause of this section.

Copy of judgment to accompany petition.

275. Every petition of appeal shall be accompanied by a copy of the judgment or order appealed against.

Copies of proceedings.

276. If any person affected by a sentence or other order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury or of

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[a] The twenty words in italics were repealed by Act No. XI of 1874, section 24.
[b] Act No. XI of 1874, section 24.
[c] Act No. XI of 1874, section 25.

any other proceeding not being the judgment or order provided for by section four hundred and sixty-four, he shall, on applying for such copy, be furnished therewith, provided that he pay for the same, unless the Court, for some special reason, sees fit to furnish it free of cost.

Such copy shall be made at the expense of the person applying for it, unless he is in jail, or unless the Court, for some special reason, sees fit to grant such copy free of expense.

Procedure when appellant in jail.

277. If the party appealing be in jail, he shall be at liberty to present his petition of appeal, and the copy of the judgment or order appealed against, to the Magistrate or other officer in charge of the jail, who shall thereupon forward the petition to the proper appellate authority.

Summary rejection of appeal.

278. The Appellate Court shall fix a reasonable time within which the appellant or his Counsel or authorized agent may appear, and it may reject the appeal if, on a perusal of the petition of appeal and the copy of the judgment or order appealed against, and after hearing the appellant or his Counsel or authorized agent, if he appears, it considers that there is no sufficient ground for questioning the correctness of the decision or for interfering with the sentence or order appealed against.

Before rejecting the appeal, the Court may call for and peruse all or any part of the proceedings of the lower Court, but shall not be bound to do so.

[a] In rejecting an appeal under this section, the Appellate Court shall not enhance the sentence.

Notice where Appellate Court decides to hear appeal.

279. If the Appellate Court decide to hear the appeal, it shall cause notice to be given to the appellant, and, if the appeal be to the Session or High Court, shall also give notice to the Magistrate of the District, who shall inform, if necessary, the Public Prosecutor, Government Pleader or other officer empowered by Government in that behalf, of the day on which such appeal will be heard,

[b] and in cases under section two hundred and seventy-two, where the Appellate Court decides to hear the appeal, it shall also cause notice to be given to the respondent.

Appellate Court may alter, reverse or enhance sentence,

280. The Appellate Court, after perusing the proceedings of the lower Court, and after hearing the appellant, his Counsel or agent, if they appear, and the Public Prosecutor, Government Pleader or other officer empowered by Government or by the Magistrate of the District in that behalf, if he appears, may alter or reverse the finding and sentence or order of such Court, and may, if it

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[a] Act No XI of 1874, section 26.
[b] Act No XI of 1874, section 27.

see reason to do so, enhance any punishment that has been awarded [a] or order the appellant to be retried : or order retrial.

Provided that, if the appeal is from the sentence of a Magistrate of any class, the Appellate Court shall not inflict a greater punishment than might have been inflicted by a Magistrate of the first class.

281. In any case in which an appeal is allowed, the Appellate Court may, pending the appeal, order that the sentence be suspended, and, if the appellant be in confinement for an offence which is bailable, may order that he be released on bail. Suspension of sentence pending appeal. Release of appellant on bail.

The period during which the sentence is suspended shall be omitted in reckoning the completion of the punishment.

282. In any case in which an appeal has been allowed, the Appellate Court, if it thinks further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the appellant to be necessary, may either make such further inquiry and take such additional evidence itself, or may direct such inquiry to be made and additional evidence to be taken. Appellate Court may make or direct further inquiry.

If the Appellate Court takes further evidence and passes judgment and sentence, no fresh right of appeal arises in respect of such sentence.

When the evidence has not been taken before itself, the result of the further inquiry and the additional evidence shall be certified to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the presence of the appellant may be dispensed with when the further inquiry is made or evidence taken.

The provisions of this Act relating to summoning and enforcing the attendance of witnesses and their examination shall, so far as may be, apply to witnesses examined under this section.

283. No finding or sentence passed by a Court of competent jurisdiction shall be reversed or altered on appeal on account of any error or defect, either in the charge or in the proceedings on or before trial, or on account of the improper admission or rejection of any evidence, or by any misdirection in any charge to a jury, unless such error or defect has occasioned a failure of justice, either by affecting the due conduct of the prosecution, or by prejudicing the prisoner in his defence. [b] Finding or sentence when reversible by reason of error or defect in charge or proceedings.

No irregularity in the proceedings up to trial is a sufficient ground for reversing any judgment, sentence or order made or passed in a trial properly held.

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[a] Act No. XI of 1874, section 28.

[b] *i. e.*, unfairly affecting the prisoner as to his defence on the merits, 11 Bomb. 238.

Appellate Court may reduce punishment.

In case the accused person has been sentenced to a larger amount of punishment than could have been awarded for the offence which, in the judgment of the Appellate Court, is proved by the evidence, the Appellate Court may reduce the punishment within the limits prescribed by the Indian Penal Code or any law for the time being in force for such offence.

Procedure in case of conviction by Court not having jurisdiction.

284. When any Court has convicted a person of an offence not triable by such Court, the Appellate Court shall annul the conviction and sentence of such Court, and direct the trial of the case by a Court of competent jurisdiction.

Finality of orders on appeal.

285. Judgments, sentences and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in sections two hundred and seventy-two and two hundred and ninety-seven.

Unless otherwise provided, no appeal to lie.

286. No appeal shall lie from any judgment, sentence or order of a Criminal Court, except in the cases provided for by this Act or by any law for the time being in force.

Illustrations.

(*a*) There is no appeal against an order refusing to grant compensation, or to grant an enhanced award.

(*b.*) There is no appeal against an order of a competent Magistrate dismissing a complaint.

(*c.*) There is no appeal against an order requiring a person to furnish security to keep the peace.

(*d*) There is no appeal against an order requiring a person to furnish security to be of good behaviour, when such order is passed by the Magistrate of the District.

(*e.*) There is no appeal against an order passed under chapter XXXIX; nor against a report by a jury under that chapter.

(*f.*) There is no appeal against an order of maintenance.

(*g.*) There is no appeal against an order placing a name on the jury list.

(*h.*) There is no appeal against an order by a Court of Session fining a juror or an assessor for non-attendance.

(*i.*) There is no appeal against the order of a competent Court refusing to order a commitment.

(*j.*) There is no appeal against an interlocutory order, such as a claim to appear by agent.

(*k.*) There is no appeal from an order to pay compensation under section 22 of Act I of 1871 (*An Act to consolidate and amend the law relating to trespasses by Cattle*).

CHAPTER XXI.—Reference.

287. If the Court of Session pass sentence of death, the proceedings shall be referred to the High Court, and the sentence shall not be executed without its confirmation by the High Court.

Sentence of death.

If the accused person is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall, in its judgment, state the reason why sentence of death was not passed.

288. In any case so referred, whether tried with assessors or by jury, the High Court may either confirm the sentence, or pass any other sentence warranted by law, or may annul the conviction and order a new trial on the same or an amended charge, or may acquit the accused person.

Power of High Court to confirm sentence or annul conviction.

289. If the High Court think further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused person to be necessary, it may direct such inquiry to be made, or such additional evidence to be taken.

Power to direct further inquiry, &c.

Unless the Court of reference otherwise directs, the presence of the convicted person may be dispensed with when the further inquiry is made or evidence taken, and neither under this section nor under section two hundred and eighty-two is such inquiry to be made or evidence taken in the presence of jurors or assessors.

The result of the further inquiry and the additional evidence shall be certified to the High Court, and the High Court shall thereupon proceed to pass judgment of acquittal, or to confirm the sentence, or to pass such sentence as it thinks fit.

290. In every case so referred to the High Court, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such High Court consists of two or more Judges, be determined and signed by at least two Judges of such Court.

Confirmation or new sentence to be signed by two Judges.

291. When a High Court of reference, revision or appeal consists of a single Judge, such Judge shall have all the powers conferred upon two or more Judges of the High Court by this chapter.

When High Court consists of one Judge.

CHAPTER XXII.—Superintendence and Revision.

292. The High Court may make and issue general rules—

Power of High Court to make rules.

for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it, and

for the preparation and transmission of any calendars or statements to be prepared and submitted by such Courts;

and may also frame forms (when not prescribed by this Act) for every proceeding in the said Courts for which it thinks that a form should be provided;

and from time to time may alter any such rule or form;

and, with the concurrence of the Local Government, may make and issue general rules for regulating the practice and proceedings of all Criminal Courts subordinate to it, and, with the like sanction, may alter any such rule;[a]

and a High Court not established by Royal Charter may, with the concurrence of the Local Government, make and issue rules for regulating the practice and proceedings of that Court, and, with the like sanction, may alter any such rule:

Provided that such rules and forms be not inconsistent with the provisions of this Act, or of any other law in force for the time being.

All rules framed by the Court and all repeals and alterations thereof under this section, shall be published in the official Gazette.

Calendars of trials by Subordinate Courts.

293. All Subordinate Courts shall send to the High Court such periodical statements or calendars of trials held by such Courts as the High Court prescribes, exhibiting the offences charged, the offences of which the accused persons are convicted, and the sentences or orders passed upon them.

Power to call for records of Subordinate Courts.

294. The High Court may call for and examine the record of any case tried by any Subordinate Court, for the purpose of satisfying itself as to the legality or propriety of any sentence or order passed, and as to the regularity of the proceedings of such Court.

Power of Court of Session and Magistrate to call for record of Subordinate Courts.

295. Any Court of Session or Magistrate of the District may, at all times, call for and examine the record of any Court subordinate to such Court or Magistrate, for the purpose of satisfying itself or himself as to the legality of any sentence or order passed, and as to the regularity of the proceedings of, such Subordinate Court.

For the purposes of this section, every Magistrate in a Sessions Division shall be deemed to be subordinate to the Sessions Judge of the Division.

Power to report to High Court.

296. If the Court of Session or Magistrate of the District is of opinion that the judgment or order is contrary to law, or that the punishment is too severe or is inadequate, such Court or Magistrate may report the proceedings for the orders of the High Court:

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[a] *Bombay Government Gazette*, 9th January 1873, p. 20: *ibid.*, 10th February 1876, p. 135.

[a]In session cases, if a Court of Session or Magistrate of the District considers that a complaint has been improperly dismissed, or that an accused person has been improperly discharged, by a Subordinate Court, such Court or Magistrate may direct the accused person to be committed for trial [b] upon the matter of such complaint or of which the accused person has been, in the opinion of the Court or Magistrate, improperly discharged: Power to commit for retrial.

[c] Provided that, if in the opinion of such Court or Magistrate, the evidence shews that some other offence has been committed by the accused person, such Court or Magistrate may direct the Subordinate Court to inquire into such offence.

297. If, in any case either called for by itself or reported for orders, or which comes to its knowledge, it appears to the High Court that there has been a material error [d] in any judicial proceeding of any Court subordinate to it, it shall pass such judgment, sentence or order thereon as it thinks fit. Powers of revision.

If it considers that an accused person has been improperly discharged,[e] it may order him to be tried, or to be committed for trial; Power to order commitment.

If it considers that the charge has been [f] incorrectly framed, and that the facts of the case show that the prisoner ought to have been convicted of an offence other than that of which he was convicted, it shall pass sentence for the offence of which he ought to have been convicted: Power to alter finding and sentence.

Provided that, if the error in the charge appears materially to have misled and prejudiced the accused person in his defence, the High Court shall annul the conviction, and remand the case to the Court below, with an amended charge, and the Court below shall thereupon proceed as if it had itself amended such charge. Proviso as to power of altering finding.

If the High Court considers that any person convicted by a Magistrate has committed an offence not triable by such Magistrate, it may annul the trial and order a new trial before a competent Court. Power to annul conviction.

If it considers that the sentence passed on the accused person is one which cannot legally be passed for the offence of which the accused person has been convicted, or might have been legally convicted upon the facts of the case, it shall annul such sentence and pass a sentence in accordance with law. Power to annul improper, and to pass proper, sentence.

If it considers that the sentence passed is too severe, it may pass any lesser sentence warranted by law; if it considers that the sentence is inadequate, it may pass a proper sentence.

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a, b, c Act No. XI of 1874, section 29.

d 11 Bomb. 125.

e not if he has been improperly acquitted, 12 Beng. Appendix 22. 11 Bomb. 120. See sec. 272 *supra*.

f Act No. XI of 1874, section 30.

Suspension of sentence.

The High Court may, whenever it thinks fit, order that the sentence, in any case coming before it as a Court of revision, be suspended; and that any person imprisoned under such sentence be released on bail, if the offence for which such person has been imprisoned be bailable.

Powers of revision confined to High Court.

Except as provided in sections three hundred and twenty-eight and three hundred and ninety-eight, no Court, other than the High Court, shall alter any sentence or order of any subordinate Court, except upon appeal by the parties concerned.

Optional with Court of revision to hear parties.

No person has any right to be heard before any High Court, in the exercise of its powers of revision, either personally or by agent; but the High Court may, if it thinks fit, hear such person either personally or by agent.

Power to order inquiry into dismissed complaint.

[a] **298.** The High Court or the Court of Session may direct the Magistrate of the District, by himself or by any of the Magistrates subordinate to him, or the Magistrate of the District may direct any subordinate Magistrate, to make further inquiry into any complaint which has been dismissed under section one hundred and forty-seven.

Order on revision to be certified to lower Court or District Magistrate.

299. Whenever a case is revised by the High Court under this chapter, it shall certify its decision or order to the Court in which the conviction was had or by which the order was passed; or, if the conviction or order was passed by a Magistrate other than the Magistrate of the District, to the Magistrate of the District.

Procedure thereupon.

The Court or Magistrate to which the High Court certifies its order shall thereupon make such orders as are conformable to the decision of the High Court, and, if necessary, the record shall be amended in accordance therewith:

In cases revised by the High Court under this chapter, the High Court shall not alter or reverse the sentence or order of the Court below, except as herein provided; nor shall it reverse or set aside the verdict of a jury, unless it is of opinion that the jury was misdirected by the Judge. In that case it may set aside the verdict and direct a new trial, if it think fit to do so.

Provisions of section 283 to apply.

300. The provisions of section two hundred and eighty-three shall apply to revision orders under this chapter.

PART VII.

EXECUTION.

CHAPTER XXIII.

Procedure in cases referred to High Court

301. In cases referred by the Court of Session for the confirmation of a sentence of death by the High Court, the proper officer of the High Court

[a] Act No. XI of 1874, section 31.

shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court and attested with his official signature, to the Court of Session. for confirmation.

Such Court shall, if the sentence be confirmed or commuted, issue a warrant to the officer in charge of the jail in which the prisoner is confined, to cause the sentence or order to be carried into execution; or, in the case of any other orders, shall cause such orders to be carried into effect.

302. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence to the Magistrate of the District in which the trial was held. Court of Session to send copy of sentence to District Magistrate.

If the accused person is sentenced to transportation, imprisonment or whipping, the Court shall forthwith forward him, with a warrant for the execution of the sentence, to the officer in charge of the jail of the district in which the trial was held. Warrant of execution.

The warrant shall state the offence of which the accused person has been convicted, and the period during which he is to be transported or imprisoned, and the nature of the imprisonment or other punishment.

[a] **302A.** In cases tried by any Court inferior to a Court of Session, where the accused person is sentenced to imprisonment, the Court shall forthwith forward him with a similar warrant for the execution of the sentence to the officer in charge of the jail of the district in which the trial was held: Procedure after sentence in cases tried by Court inferior to Court of Session.

But where the accused person is sentenced to whipping, the sentence may be executed at such place and time as the Court may direct.

303. Every warrant for the commitment of a person to custody shall be in writing and signed and sealed by the Judge or Magistrate who issues it, and shall be directed to some jailor or other officer or person having authority to receive and keep prisoners, and shall be in the form (C or D as the case may be) given in the second schedule to this Act or to the like effect. Form and direction of warrant of commitment.

304. The warrant of commitment shall be lodged with the jailor, if he be in the jail; and if he be not in the jail, with his deputy. Warrant with whom to be lodged

If the jailor has no deputy, the warrant may be lodged with any officer of the jail then being in the jail.

305. Upon the receipt of a warrant under section three hundred and one or three hundred and two, the officer in charge of the jail shall cause the sentence to be executed, and shall return the warrant, when the sentence has been Execution of sentence under section 301 or 302.

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[a] Act No. XI of 1874, section 32.

fully executed, to the Court from which it issued, with an endorsement under his signature, certifying the manner in which the sentence has been executed.

Postponement of capital sentence on pregnant woman.

306. If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence.

Levy of fine.

307. Whenever an offender is sentenced to pay a fine, the Court which sentences him may issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, whether or not the offence be punishable with fine only, and whether or not the sentence direct that, in default of payment of the fine, the offender shall suffer imprisonment.

Such warrant may be executed within the jurisdiction of the Court that issued it, and it shall authorize the distress and sale of any moveable property belonging to the offender without the jurisdiction of the said Court, when endorsed by the Magistrate of the District in which such property is situated.

Saving of special procedure.

This section shall not apply to cases in which any special procedure is laid down, by any special or local law in force for the time being, for the recovery of any fine, but shall apply to cases in which no such procedure is laid down, and to all fines not levied when this Act comes into force, but which might have been levied under this section if it had been in force when they were imposed.

Who may issue warrant.

The warrant may be issued either by the Judge or Magistrate who passes the sentence or by his successor in office.

Payment of fine in compensation.

308. Whenever a Criminal Court imposes a fine under any law in force for the time being, or confirms in appeal or revision a sentence of such fine, or a sentence of which such fine forms a part, the Court may order the whole or any part of the fine to be paid in compensation,

(1) for expenses properly incurred in the prosecution,

(2) for the offence complained of, where such offence can, in the opinion of the Court, be compensated by money.

Such payment shall be made, as the Court thinks fit, to or for the benefit of the complainant, or the person injured, or both.

If the fine be awarded by a Court whose decision is subject to appeal or revision, the amount awarded shall not be paid until the period prescribed for presentation of the appeal has elapsed, or, if an appeal be presented, till after the decision of the appeal.

In any subsequent civil proceedings relating to the same matter, the Court shall take into account any sum which may have been awarded under this section.[a]

309. In every case punishable under any law in force for the time being with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, the Criminal Courts shall be guided by the provisions of sections sixty-four and sixty-five of the Indian Penal Code in awarding the period of imprisonment in default of payment of the fine:

Imprisonment in default of payment of fine.

Provided that, in no case decided by a Magistrate, where imprisonment shall have been awarded as part of the substantive sentence, shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence, otherwise than as imprisonment in default of payment of the fine.

Proviso as to cases decided by a Magistrate.

Where a person is sentenced to fine only, the Magistrate may award such term of imprisonment in default of payment of fine as is allowed by law, provided the amount does not exceed the Magistrate's powers under this Act.

310. When the punishment of whipping is awarded, in addition to imprisonment, by a Court whose sentence is open to revision by a superior Court, the whipping shall not be inflicted until fifteen days from the date of such sentence, or, if an appeal be made within that time, until the sentence is confirmed by the superior Court: but the whipping shall be inflicted immediately on the expiry of the fifteen days, or, in case of an appeal, immediately on the receipt of the order of the Appellate Court confirming the sentence.

Whipping, if awarded in addition to imprisonment, when to be inflicted.

311. In the case of a person of or over sixteen years of age, the punishment of whipping shall be inflicted with such instrument, in such mode, and on such part of the person, as the Local Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in the way of school discipline with a light ratan.

Mode of inflicting the punishment.

In no case, if the cat-of-nine tails be the instrument employed, shall the punishment of whipping exceed one hundred and fifty lashes, or, if the ratan be employed, shall the punishment exceed thirty stripes.

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[a] This means "that the amount, if any, previously awarded as compensation by the Magistrate is to be taken into consideration, and not that it is to be afterwards deducted from the sum that may be given by the Court by way of damages in a subsequent civil suit," 22 Suth. W. R. Civil Rulings, 336.

The punishment shall be inflicted in the presence of a Magistrate [a] or a Superintendent of a Jail, and also, unless the Court which passed the sentence otherwise orders, in the presence of a medical officer.

Whipping not to be inflicted if offender not in fit state of health.

312. No sentence of whipping shall be carried into execution unless a medical officer, if present, certifies, or, if there is not a medical officer present, unless it appears to the Magistrate [b] or Superintendent present, that the offender is in a fit state of health to undergo the punishment.

Stay of execution.

If, during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate [c] or Superintendent present, that the offender is not in a fit state of health to undergo the remainder of the punishment, the whipping shall be finally stopped.

Not to be executed by instalments.

No sentence of whipping shall be executed by instalments.

Procedure if punishment cannot be inflicted under section 312.

313. In any case in which, under section three hundred and twelve, a sentence of whipping is, wholly or partially, prevented from being carried into execution, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either order the discharge of such offender or sentence him, in lieu of whipping, or in lieu of so much of the sentence of whipping as was not carried out, to imprisonment for any period, which may be in addition to any other punishment to which he may have been sentenced for the same offence:

Provided that the whole period of imprisonment to which such offender is sentenced shall not exceed that to which he is liable by law, or that which the said Court is competent to award.

Sentence in cases of simultaneous conviction of several offences.

314. When a person is convicted, at one trial, of two or more offences punishable under the same or different sections of any law for the time being in force, the Court may sentence him, for the offences of which he has been convicted, to the several penalties prescribed by such enactment or enactments, which such Court is competent to inflict; such penalties, when consisting of imprisonment or transportation, to commence the one after the expiration of the other.

It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Maximum term of imprisonment.

Provided that in no case shall such person be sentenced to imprisonment for a longer period than fourteen years:

[a, b, c] Act No. XI of 1874, section 33.

Provided also that, if the case be tried by a Magistrate (other than a Magistrate acting under section thirty-six), the punishment shall not in the aggregate exceed twice the amount of punishment which he is, by his ordinary jurisdiction, competent to inflict.

Trial of previously convicted persons.

315. Whoever, having been convicted of an offence punishable under chapter XII or chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate considers him an habitual offender, be committed to the Court of Session:

Proviso.

Provided that, in districts in which the Magistrate of the District has been invested with powers under section thirty-six, the accused person may be placed on his trial before such Magistrate of the District.

Currency of sentence on escaped convicts.

316. When sentence is passed on an escaped convict, for such escape or for any other offence, the Court may direct the sentence to take effect immediately, or after such convict has suffered imprisonment or transportation, as the case may be, for a further period, equal to that which remained unexpired of his former sentence at the time of his escape.

Sentence on offender already sentenced for another offence.

317. When sentence is passed on a person already under sentence of imprisonment or transportation, and the sentence is for imprisonment or transportation, the Court shall direct that such imprisonment or transportation shall commence at the expiration of the imprisonment or transportation to which such person has been previously sentenced,

or, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be for transportation, the Court may direct that the sentence shall commence immediately, or at the expiration of the imprisonment to which such person has been previously sentenced:

Proviso.

Provided that nothing in this section shall be held to excuse such person from any part of the punishment to which he is liable upon such former or subsequent conviction.

Confinement of youthful offenders in reformatories.

318. When any person under the age of sixteen years is sentenced by any Criminal Court to imprisonment for any offence, such Court may direct that such offender, instead of being imprisoned in the criminal jail, shall be confined in any reformatory established by the Local Government[a] as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person

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[a] *Bombay Government Gazette*, 1873, pp. 98, 640.

willing to obey such rules as the Government prescribes with regard to the discipline and training of persons confined therein.

All persons confined under this section shall be subject to the rules so prescribed by Government.[a]

Places to which persons sentenced to transportation may be sent.

319. The Governor General of India in Council may, from time to time, appoint a place or places within British India to which persons sentenced to transportation shall be sent:[b] the Local Government, or some officer duly authorized by such Government, shall give orders for the removal of such persons to the place or places so appointed; and no sentence of transportation shall specify the place to which the person sentenced is to be transported.

Persons sentenced to transportation while undergoing transportation under previous sentence.

320. When sentence of transportation is passed on a person already undergoing transportation under a sentence previously passed for another offence, it shall not be necessary for the Local Government to order his removal from the place in which he is so undergoing transportation.

Sentence of death.

321. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

Power to remit punishment.

322. When any person has been sentenced to punishment for an offence, the Governor General of India in Council, or the Local Government, may at any time, without conditions, or upon any conditions which the person sentenced accepts, remit the whole or any part of the punishment to which he has been sentenced[c] or grant a reprieve or respite in respect of such sentence.

If the person to whom a pardon has been given fails to fulfil the conditions prescribed by the Governor General of India in Council or the Local Government, the Governor General of India in Council or the Local Government, as the case may be, may withdraw such pardon, whereupon such person shall be remanded to undergo the unexpired portion of his sentence.

Power to commute punishment.

The Governor General of India in Council or the Local Government, may also, without the consent of the person sentenced, in substitution for the sentence passed according to law, commute any one of the following sentences for any other mentioned after it:—

death, transportation, penal servitude, imprisonment.

[d]This section applies to all punishments inflicted by the High Court: Provided that nothing herein contained shall be deemed to interfere with the

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[a] Repealed by Act No. V of 1876, wherever that Act is in force.

[b] *Gazette of India*, 1869, pp. 355, 871: *ibid.*, 1870, pp. 50, 785: *ibid.*, 1872, p. 846: *ibid.*, 1873, pp. 732, 787.

[c, d] Act No. XI of 1874, section 34.

right of Her Majesty to grant pardons, reprieves, respites or remissions of punishment:

When any fine or forfeiture is imposed on any person for any offence, the Governor General in Council or the Local Government may (subject to the provisions of section three hundred and eight) direct that a share or proportion of such fine be paid over to the prosecutor towards defraying his expenses, as the Governor General in Council or the Local Government thinks fit.

PART VIII.

EVIDENCE.

CHAPTER XXIV.—Special Rules of Evidence in Criminal Cases.

323. The examination of a civil surgeon or other medical witness, taken and duly attested by a Magistrate, may be given in evidence in any criminal trial, although the person examined is not called as a witness.

Evidence of medical witness.

The Court may summon such civil surgeon or other medical witness, if it sees sufficient cause for doing so.

Court may summon medical witness.

324. If an accused person admits the commission of an offence before a Court competent to try him for such offence, such Court may convict him on his own admission.

Accused may be convicted on his own admission.

325. Any document purporting to be a report from the chemical examiner, or assistant chemical examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report, in the course of any criminal trial, or in any preliminary inquiry relating thereto, may, if it bears his signature, be used as evidence in any criminal trial.

Report of chemical examiner.

The Court may presume that the signature of any such document is genuine, and that the person signing it held the office which he professed to hold at the time when he signed it.

Genuineness of signature may be presumed.

326. Where a previous conviction or acquittal is to be proved against an accused person, application shall be made to the officer in whose custody the records of such trial may be. It shall not be necessary to produce the record of the conviction or acquittal of such accused person, or a copy thereof, but an extract may be produced in proof of such conviction or acquittal, if certified, under the hand of the Clerk of the Court or other officer having the custody of the records of the Court in which such conviction or acquittal was had, or by the deputy of such clerk or officer, to be a copy of the charge, finding and sentence, as the case may be.

Previous conviction or acquittal how proved.

Recording evidence in absence of accused.

327. If an accused person abscond, and after due pursuit cannot be arrested, any Court competent to try or to commit such accused person for trial for the offence complained of may, in his absence, record the statements of the persons acquainted with the facts; and such depositions may, on the arrest of such person, be put in on his trial for such offence, if it is not practicable to procure the attendance of such witnesses.

Convictions on evidence partly recorded by one Magistrate and partly by another.

328. Whenever any Magistrate, after having heard part of the evidence in a case, ceases to exercise jurisdiction in such case, and is succeeded by another Magistrate who has and who exercises jurisdiction in such case, such last named Magistrate may decide the case on the evidence partly recorded by his predecessor and partly recorded by himself, or he may resummon the witnesses and commence afresh:

Provided that the accused person may, when the second Magistrate commences his proceedings, demand that the witnesses shall be resummoned and reheard, in which case the trial shall be commenced afresh:

Provided also that any Court of Appeal or Revision before which the case may be brought,

or, in cases tried by Magistrates subordinate to the Magistrate of the District, the Magistrate of the District, without appeal,

may set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or Magistrate is of opinion that the accused person has been materially prejudiced thereby; and may order a new trial.

Commitments on evidence partly recorded by one officer and partly by another.

329. Whenever, from any cause, a Magistrate making an inquiry under chapter XV of this Act is unable to complete the proceedings himself, any other Magistrate having jurisdiction to inquire and to commit may complete the case and proceed as if he had recorded all the evidence himself.

When a commission may issue.

330. Whenever it appears that the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, it shall be competent to a Court of Session or to a High Court to dispense with the personal attendance of such witness.

Mode of issuing commission.

Such Court of Session or High Court may direct a commission to the Magistrate of the District, or to a Magistrate of the First Class, in whose jurisdiction such witness may be. The Magistrate to whom the commission is directed shall proceed to the place where such witness is, or shall summon such witness before himself. Such Magistrate shall take the evidence of such witness in the same manner, and shall have for this purpose, and may exercise, the same powers as in trials of warrant cases.

[a] If the witness is within the local limits of the ordinary original criminal jurisdiction of any of the High Courts of Judicature at Fort William, Madras and Bombay, the Court dispensing with his personal attendance may direct a commission to any Police Magistrate within such limits, and such Police Magistrate shall have the like power to compel the attendance and examination of witnesses as he possesses for that purpose in cases pending before him.

Prosecutor and accused may examine witness.

The prosecutor and the accused person may forward interrogatories, [b] upon which the officer to whom the commission is directed shall [c] examine the witness, or the prosecutor may appear personally before the Magistrate [d] or Police Magistrate to whom the commission is directed, or the prosecutor or accused person may so appear by authorized agent.

Procedure when commission is required in Magistrate's cases.

Whenever, in the course of a trial before a Magistrate, it shall appear that a commission ought to be issued for the examination of a witness whose evidence is necessary in such trial, such Magistrate shall apply to the Court of Session to which he is subordinate, stating the reasons for the application; and such Court may either issue a commission, in the manner hereinbefore provided, or may reject the application.

Return of commission.

[e] After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto, and the deposition of such witness may be used as evidence in the case and shall form part of the record.

CHAPTER XXV.—Evidence how taken.

Examination of complainants and witnesses.

331. In all Criminal Courts, complainants and witnesses shall be examined upon oath or affirmation, or otherwise, according to the provisions of the law for the time being in force in relation to the examination of witnesses.[f]

Manner of recording evidence;

332. In inquiries and trials (other than summary trials) under this Act, the evidence of the witnesses shall be recorded by the Magistrate or Sessions Judge, as the case may be, in the following manner.

in summons cases, and in trials by Magistrates of the First and Second Classes, of certain offences;

333. In summons cases tried before Magistrates, and in cases of the kind referred to in section two hundred and twenty-two, when tried by a Magistrate of the First or Second Class, otherwise than at a summary trial, the Magistrate shall make a memorandum of the substance of the evidence of each witness, as the examination of the witness proceeds.

[a, b, c, d, e] Act No. XI of 1874, section 35.
[f] See Act No. X of 1873.

Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

In all other cases before Magistrates, and in all proceedings before Courts of Session.

334. In all other cases[a] before Magistrates, and in all proceedings before Courts of Session, the evidence of each witness shall be taken down in writing in the language in ordinary use in the district in which the Court is held, by or in the presence and hearing, and under the personal direction and superintendence, of the Magistrate or Sessions Judge, and shall be signed by the Magistrate or Sessions Judge.

Evidence in English.

When the evidence of a witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand; and an authenticated translation of the same, in the language in ordinary use in the district in which the Court is held, shall form part of the record.

If the accused person be a European British subject, or be familiar with the English language, no translation shall be necessary.

Memorandum when evidence not taken down in writing.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to do so.

Local Government may direct evidence to be recorded by Sessions Judge or Magistrate himself in his vernacular;

335. The Local Government may direct that, in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the evidence of complainants or witnesses shall be taken down by the Sessions Judge or Magistrate with his own hand in the vernacular language of the Sessions Judge or Magistrate,[b] unless the Sessions Judge or Magistrate be prevented by any sufficient reason from taking down the evidence of any complainant or witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record:

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[a] 11 Beng. Appendix 6.

[b] See *Gazette of India*, 1874, p. 149: *Bombay Government Gazette*, 1873, p. 277: *Panjáb Gazette*, 1873, p 76: *British Burma Gazette*, 1873, part II, p. 7.

Provided that, if the vernacular language of the Sessions Judge or Magistrate be not English or the language in ordinary use in the district in which the Court is held, the Local Government may direct him to take down the evidence in the English language, or in the language in ordinary use in the district in which the Court is held, instead of his own vernacular.

or in English or in language in ordinary use in district.

336. In cases of the kind referred to in section three hundred and thirty-three, tried before Magistrates, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section three hundred and thirty-four, or, if, within the jurisdiction of such Magistrate, the Local Government has made the order referred to in section three hundred and thirty-five, in the manner provided in section three hundred and thirty-five.

In cases referred to in section 333, Magistrate may record as provided in section 334 or section 335.

337. The Local Government may determine what, for the purposes of this Act, shall be held to be the language in ordinary use in any district in which a Court is held.[a]

Local Government to decide what language is in ordinary use.

338. The evidence taken under section three hundred and thirty-four shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

Form of record of evidence.

It shall be in the discretion of the Magistrate or Sessions Judge to take down, or cause to be taken down, any particular question and answer, if there appears any special reason for so doing, or if any person who is a prosecutor or a person accused, or his counsel or agent, requires it.

339. As the evidence of each witness, taken under section three hundred and thirty-four, is completed, it shall be read over to the witness in the presence of the accused person, if in attendance, or of his agent, when his personal attendance is dispensed with and he appears by agent, and shall, if necessary, be corrected.

Procedure as evidence of each witness is completed.

If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his evidence as taken down to be interpreted to him in the language in which it was given, or in a language which he understands.

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[a] See *Calcutta Gazette*, 1873, pp. 912, 1116.

Interpretation of evidence to accused or his agent.

340. In all cases whatever, when the evidence is given in a language not understood by the accused person, it shall be interpreted to him in open Court in a language understood by him, where he is present in person.

If he appears by agent, and the evidence is given in a language other than the language in ordinary use in the district in which the Court is held, it shall be interpreted to such agent in that language.

In cases in which documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

Remarks respecting demeanour of witness.

341. Every Sessions Judge or Magistrate recording the evidence of a witness shall record such remarks as he thinks material respecting the demeanour of such witness whilst under examination.

Of the Examination of Accused Persons.

Accused may be questioned by Court.

342. In all inquiries[a] and trials, a Criminal Court may from time to time and at any stage of the proceedings, put any questions to the accused person which such Court may think proper.

Accused not punishable for refusal to answer.

343. The accused person shall not be liable to any punishment for refusing to answer, or for answering falsely, questions asked under section three hundred and forty-two, but the Court shall draw such inference as seems just from such refusal.

No influence to be used to induce disclosures.

344. Except as is provided in section three hundred and forty-seven, no influence, by means of any promise or threat or otherwise, shall be used to the accused person to induce him to disclose or withhold any matter within his knowledge.

Accused not to be sworn.

345. No oath or affirmation shall be administered to the accused person.

Examination of accused how recorded.

346. Whenever an accused person is examined, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers.

When the whole is made conformable to what he declares is the truth, the examination shall be attested by the signature of the Magistrate or Sessions Judge, who shall certify under his own hand that it was taken in his presence and in his hearing, and contains accurately the whole of the statement made by the accused person.

In cases in which the examination of the accused person is not recorded by the Magistrate or Sessions Judge himself, he shall be bound, as the exami-

[a] See secs. 193 and 250 *supra*.

nation proceeds, to make a memorandum thereof in the vernacular of the district, or in English, if he is sufficiently acquainted with that language; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall be annexed to the record. If the Magistrate or Sessions Judge is precluded from making a memorandum as above required, he shall record the reason of his inability to do so.

The accused person shall sign, or attest by his mark, such record.[a]

If the examination be taken in the course of a preliminary inquiry,[b] and the Court of Session find that the provisions of this section have not been fully complied with, it shall take evidence that the prisoner duly made the statement recorded: Provided that, if the error does not prejudice the prisoner,[c] it shall not be deemed to affect the admissibility of the statement so recorded.

Magistrate may tender pardon to accomplice.

347. The Magistrate of the District, any Magistrate of the First Class inquiring into the case, or, with the sanction of the Magistrate of the District, any Magistrate duly empowered to commit to the Court of Session, may, after recording his reason for so doing, tender a pardon to any one or more of the persons supposed to have been directly or indirectly concerned in, or privy to, any offence specified in column seven of the fourth schedule hereto annexed as triable exclusively by the Court of Session, on condition of his or their making a full, true and fair disclosure of the whole of the circumstances, within his or their knowledge, relative to the crime committed, and every other person concerned in the perpetration thereof.

Any person accepting a tender of pardon under this section shall be examined as a witness in the case, under the rules applicable to the examination of witnesses.

Such person, if not on bail, shall be detained in custody pending the termination of the trial.

A Magistrate having tendered a pardon under this section, and examined the accused person, is precluded from trying the case himself.[d]

High Court or Court of Session may direct tender of pardon.

348. The High Court as a Court of revision, and the Court of Session after committal but before the commencement of a trial, may, with the view of obtaining on the trial the evidence of any person or persons supposed to have been directly or indirectly concerned in, or privy to, any such offence, in-

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[a] This probably means 'the record of such examination,' *Reg.* v *Bái Ratan*, 10 Bomb. 177: 11 Bomb. 44, 237.

[b] under chapters XIV and XV, 10 Bomb 166.

[c] *i. e.*, unfairly affect him as to his defence on the merits, 11 Bomb. 238.

[d] But *ex hypothesi* the case is triable exclusively by the Court of Session Possibly the meaning is 'precluded from trying any charge arising out of the case.'

struct the committing Magistrate to tender a pardon on the same condition to such person or persons.

The Court of Session, in like manner and on the same condition, may, at any time before judgment is passed, with the view of obtaining on the trial the evidence of any person or persons supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender a pardon to such person or persons.

When Magistrate, Court of Session or High Court may direct commitment of person to whom pardon has been tendered.

349. When a pardon has been tendered under section three hundred and forty-seven or section three hundred and forty-eight, if it appears to the Magistrate before the trial, or to the Court of Session before judgment has been passed, or to the High Court as a Court of reference or revision, that any person who has accepted such offer of pardon has not conformed to the conditions under which the pardon was tendered, either by wilfully concealing anything essential, or by giving false evidence, such Magistrate or Court may commit, or direct the commitment of, such person, for trial for the offence in respect of which the pardon was so tendered.

The statement made by a person under pardon, which pardon has been withdrawn under this section, may be put in evidence against him.

CHAPTER XXVI.—Of securing the Attendance of Witnesses.

Procedure for obtaining attendance of witnesses.

350. The following procedure shall be pursued in order to obtain the attendance of witnesses before a Magistrate or Criminal Court.

Power to summon material witness or examine person present.

351. Any Court or Magistrate may, at any stage of any proceeding, inquiry or trial, summon, in the manner provided by chapter XII, any witness, or examine any person in attendance though not summoned as a witness, and it shall be its or his duty to do so if the evidence of such person appears essential to the just decision of the case.

When warrant of arrest may issue in first instance.

352. If a Court or Magistrate has reason to believe that any witness whose attendance is required will not attend to give evidence without being compelled to do so, it or he may, instead of issuing a summons, issue a warrant of arrest in the first instance.

Procedure when warrant cannot be served.

353. If such warrant cannot be executed, and the Court or Magistrate considers that the witness absconds or conceals himself for the purpose of avoiding the service thereof, it or he may issue a proclamation, requiring the attendance of such witness to give evidence at a time and place to be named therein, to be affixed on some conspicuous part of such witness' ordinary place of abode.

If the witness does not attend at the time and place named in such proclamation, the Court or Magistrate may order the attachment of any moveable property belonging to such witness, to such amount as seems reasonable, not being in excess of the amount of costs of attachment and of any fine to which the witness may be liable under the provisions of the following section.

Such order shall authorize the attachment of any moveable property within the jurisdiction of the Court or Magistrate by whom it was made; and it shall authorize the attachment of any moveable property without the jurisdiction of the said Court or Magistrate, when endorsed by the Magistrate of the District in which such property is situated.

Release of attached property of witness appearing and satisfying Court or Magistrate.

354. If the witness appears and satisfies such Court or Magistrate that he did not abscond or conceal himself for the purpose of avoiding the execution of the warrant, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court or Magistrate shall direct that the property be released from attachment, and shall make such order in regard to the costs of the attachment as to such Court or Magistrate seems fit.

Sale of property of witness not appearing or not satisfying Court or Magistrate.

If such witness does not appear, or, appearing, fails to satisfy the Court or Magistrate that he did not abscond or conceal himself for the purpose of avoiding the execution of the warrant, and that he had not such notice of the proclamation as aforesaid, the Court or Magistrate may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of any fine which may be imposed upon such witness under the provisions of section one hundred and seventy-two of the Indian Penal Code.

If the witness pays to such Court or Magistrate the costs and fine as aforesaid, his property shall be released from attachment.

Arrest of person disobeying summons.

355. If any person summoned to give evidence neglects or refuses to appear at the time and place appointed by the summons, and no reasonable excuse is offered for such neglect or refusal, the Court or Magistrate, upon proof of the summons having been duly served, may issue a warrant under his hand and seal to bring such person before him to testify as aforesaid.

Committal of person refusing to answer.

356. If any person summoned or brought before a Magistrate refuses to answer such questions as are put to him, without offering any reasonable excuse for such refusal, such Magistrate may, by warrant under his hand and seal, commit him to custody for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer; after which, in the event of his persisting in his refusal, he may be dealt with according to

the provisions of section four hundred and thirty-five or four hundred and thirty-six.

Inquiries.

In inquiries preliminary to commitment

357. In inquiries preliminary to commitment to a Court of Session or High Court, the Magistrate shall procure the attendance of the witnesses for the prosecution as in cases usually tried upon warrant; and it shall be in his discretion to summon any witness offered on behalf of the accused person to answer or disprove the evidence against him. If the Magistrate refuses to summon a witness so offered, he shall record his reasons for such refusal.

Power to summon supplementary witnesses.

The Magistrate may summon and examine supplementary witnesses after commitment and before the commencement of the trial, and bind them over to appear and give evidence. Such examination shall, if possible, be taken in the presence of the accused person, and, in every case, a copy of the examination of such witnesses shall be given him free of cost.

When accused person is to be committed.

358. In such inquiries, when the person accused is to be committed for trial, and has given in the list of witnesses mentioned in section two hundred, the Magistrate shall summon the witnesses to appear before the Court before which the accused person is to be tried.

Refusal to summon unnecessary witness unless deposit made.

359. If the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, he may require the accused person to satisfy him that there are reasonable grounds for believing that such witness is material.

If the Magistrate be not so satisfied, he shall not be bound to summon the witness; but, in doubtful cases, he may summon such witness, if such a sum is deposited with the Magistrate as he thinks necessary to defray the expense of obtaining the attendance of the witness.

Recognizances of prosecutors and witnesses.

360. Prosecutors, and witnesses for the prosecution and defence, whose attendance is necessary before the Court of Session or High Court, shall execute before the Magistrate recognizances, in the form (F) given in the second schedule to this Act, or to the like effect, to be in attendance when called upon at the Court of Session or High Court, to prosecute or to give evidence, as the case may be.

Detention in custody in case of refusal to attend or to execute recognizance.

If any prosecutor or witness refuses to attend before the Court of Session or High Court, or to execute the recognizance above directed, the Magistrate may detain him in custody until he executes such recognizance, or until the time when his attendance at the Court of Session or High Court is required, when the Magistrate shall send him under custody to the Court of Session or High Court.

Summons Cases.

361. In summons cases, the Magistrate may summon any person who appears to him likely to give material evidence on behalf of the complainant or the accused. In summons cases.

Ordinarily it shall be the duty of the complainant and accused, in non-cognizable cases, to produce their own witnesses.

In such cases, it shall be in the discretion of the Magistrate to summon any witnesses named by the complainant or the accused; and he may require, in such cases, a deposit of the expenses of a witness before summoning him.

Warrant Cases.

362. In warrant cases, the Magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with the facts and circumstances of the case, and who are likely to give evidence for the prosecution, and shall summon such of them to give evidence before him as he thinks necessary. In cases tried upon warrant.

The Magistrate shall also, subject to the provisions of section three hundred and fifty-nine, summon any witness and examine any evidence that may be offered in behalf of the accused person, to answer or disprove the evidence against him, and may, for that purpose, at his discretion, adjourn the trial from time to time. If the Magistrate refuse to summon a witness named by the accused person, he shall record his reasons for such refusal, and the accused person shall be entitled to appeal to the Court of Session against such refusal.

Sessions Trials.

363. The accused person shall be allowed to examine any witness not previously named by him, if such witness be in attendance; but he shall not, except as provided in section four hundred and forty-eight, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed or held to bail for trial. Right of accused as to examination and summoning of witness.

364. If a witness before a Court of Session refuses to answer any question which is put to him, and does not offer any just excuse for such refusal, the Court may commit him to custody for such reasonable time as it deems proper, unless in the meantime he consents to be examined and to answer. Procedure in case of witness refusing to answer.

In the event of such witness persisting in his refusal, he may be dealt with according to the provisions of section four hundred and thirty-five or four hundred and thirty-six.

Of Securing Documentary Evidence.

Procedure for obtaining production of document required as evidence.

365. Whenever an officer in charge of a Police-station, or any Court, considers that the production of any document is necessary or desirable for the purposes of any investigation or judicial proceeding, such officer or Court may issue a summons to the party in whose keeping such document is believed to be, requiring him to attend and produce such document at the time and place stated in the summons.

When warrant for search for documents may issue.

366. If there appears reason to believe that the person to whom the summons is addressed will not produce it [a] as directed in the summons, such officer or Court may issue a search-warrant for the document in the first instance.

Power to impound document produced.

367. Any Court may, if it thinks fit, impound any document produced before it, or may, at the conclusion of the proceedings, order such document to be returned to the person who produced it.

CHAPTER XXVII.—Of Search-Warrants.

Search-warrant when grantable.

368. When a Magistrate considers that the production of anything is essential to the conduct of an inquiry into an offence known or suspected to have been committed, or to the discovery of the offender,

or when he considers that such inquiry or discovery will be furthered by the search or inspection of any house or place,

he may grant his search-warrant; and the officer charged with the execution of such warrant may search or inspect any house or place within the jurisdiction of the Magistrate of the District.

The Magistrate issuing such warrant may, if he see fit, specify in his warrant the house or place, or part thereof, to which only the search or inspection shall extend; and the officer charged with the execution of such warrant shall then search or inspect only the house, place or part so specified.

Procedure as to letter in custody of Postal Department.

369. The last preceding section shall not authorize any Magistrate, other than the Magistrate of the District, to grant a search-warrant for a letter in the custody of the Postal Department;

but if any such letter is wanted for the purpose of any criminal proceeding, any Magistrate or District Superintendent of Police may give notice to the Postal authorities to cause search to be made for and to detain any such letter, pending the orders of the Magistrate of the District; and the Magistrate of the District may, if he thinks fit, direct the Postal authorities to deliver up any such letter.

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[a] *i. e.*, the document mentioned in the summons.

370. A search-warrant shall ordinarily be directed to a Police officer; but the Magistrate issuing the warrant may, after recording his reasons, if immediate search is necessary and no Police officer be immediately available, direct it to any other person.

Direction of search-warrant.

371. A search-warrant directed or endorsed to a Police officer may, if he is not able to proceed in person, be executed by any other Police officer.

Warrant to one Police officer may be executed by another.

In such case the name of such Police officer shall be endorsed upon the warrant by the officer to whom it is directed or endorsed.

Endorsement.

372. When it is necessary for a search-warrant to be executed out of the district in which it was issued, any Magistrate within whose local jurisdiction the warrant is to be executed shall endorse his name thereon.

Execution of search-warrant out of district in which issued.

Such endorsement shall be sufficient authority for the Police officer charged with the execution of the warrant to execute the same within the said jurisdiction.

Or the search-warrant may be directed to the Magistrate within whose local jurisdiction the search is to be made; and he shall thereupon endorse his name on such warrant, and enforce its execution in the same manner as if it had been issued by himself.

373. Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate in whose district the warrant is to be executed will prevent the discovery of the thing for which search is to be made, the Police officer charged with the execution of the warrant may execute the same, in any place beyond the district in which it was issued, without the endorsement of the Magistrate in whose local jurisdiction that place is situate.

Search-warrants may, in emergency, be executed without endorsement.

If the thing for which search is made is found in such place, it shall, when the place where the thing is found is nearer to the Magistrate having jurisdiction in such place than to the Magistrate who issued the warrant, be immediately taken before the Magistrate in whose local jurisdiction it is found; and unless there be good cause to the contrary, such Magistrate shall make an order authorizing it to be taken to the Magistrate who issued the warrant.

Thing found to be taken to Magistrate within whose jurisdiction it is found.

Order thereon.

If the thing be not found after such search, the Police officer making the same shall, in addition to the return made to the Magistrate who issued the warrant, report the fact to the Magistrate in whose local jurisdiction the search was made.

374. If the thing searched for be found within a Presidency town, it shall be taken to the Commissioner of Police or to a Police Magistrate; and such Commissioner or Magistrate shall act in the manner prescribed in section three hundred and seventy-three.

Procedure in such cases within Presidency town.

Magistrate may issue search-warrant to be executed in jurisdiction of another Magistrate.

375. Whenever it appears necessary, a Magistrate may, by his warrant, order search to be made in a place out of his jurisdiction, and may direct that the warrant be executed either after or without obtaining the endorsement of the Magistrate within whose jurisdiction the search is to be made.

When a Magistrate issues a warrant under this section, he shall inform the Magistrate within whose local jurisdiction the house or place to be searched is situate, or if the house or place be situate within a Presidency town, he shall inform the Commissioner of Police, of the issue of such warrant.

Magistrate may send search-warrant by post to Magistrate of another District or Division of District.

376. A Magistrate issuing a search-warrant to be executed in any house or place out of the jurisdiction of the Magistrate of the District, or out of his own Division, may direct the warrant to any Magistrate within whose local jurisdiction such house or place is situate, and may send the same by post.

Endorsement and execution by such Magistrate.

On receipt of such warrant by the Magistrate to whom it is directed, he shall endorse his name thereon, and enforce its execution in the same manner as if it had been originally issued by himself.

Direction of warrant to be executed in Presidency town.

If the warrant is to be executed within a Presidency town, it shall be addressed to the Commissioner of Police or to a Police Magistrate.

In such case, any property found on search made may be dealt with as provided in sections three hundred and seventy-three and three hundred and seventy-four.

Search of house suspected to contain stolen property or forged documents.

377. If the Magistrate of the District, or a Magistrate of a Division of a District, or a Magistrate of the First Class, upon information and after such inquiry as he thinks necessary, has reason to believe that any house or place is used as a place for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, or counterfeit Government stamps, or counterfeit coin, or instruments or materials for counterfeiting coin or for forging,

or that any forged documents, or counterfeit stamps, or false seals, or counterfeit coin, or instruments or materials used for counterfeiting coin, or for forging, are kept or deposited in any house or place,

he may by his warrant authorize any Police officer above the rank of a constable to enter, with such assistance as may be required, and by force if necessary, any such house or place, and to search all such parts of the same as are specified in the warrant, and to seize and take possession of any property, documents, stamps, seals or coins therein found, which he reasonably suspects to be stolen, forged, false or counterfeit, and also of any such instruments and materials as aforesaid.

378. The Magistrate by whom a search-warrant is issued may attend personally for the purpose of seeing that the warrant is duly executed.

Magistrate may attend personally.

The Magistrate may also direct a search to be made in his presence, of any house or place for the search of which he is competent to issue a search-warrant.

Magistrate may direct search in his presence.

379. Whenever an officer in charge of a Police-station, or a Police officer making an investigation, considers that the production of anything is necessary to the conduct of an investigation into any offence which he is authorized to investigate, he may search or cause search to be made for the same, in any house or place within the limits of the station of which he is in charge or to which he is attached.

Search by officer in charge of Police-station.

In such case, the officer in charge of the Police-station or Police officer making investigation shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, the officer in charge of the Police-station, or Police officer making investigation, may require any officer subordinate to him to make the search; and he shall deliver to such subordinate officer an order in writing, specifying the property for which search is to be made and the house or place to be searched, and such subordinate officer may thereupon search for such property in such house or place.

The provisions of sections three hundred and eighty-two to three hundred and eighty-five (both inclusive), relating to search-warrants, shall be applicable to a search made under this section.

380. An officer in charge of a Police-station may require an officer in charge of another Police-station, whether subordinate to the same Magistrate as himself or to a Magistrate of another district, to cause a search to be made in any house or place, in any case in which the former officer might cause such search to be made within the limits of his own station.

When officer of Police-station may require another to issue search-warrant.

Such officer, on being so required, shall proceed according to the provisions of section three hundred and seventy-nine, and shall forward the thing found, if any, to the officer at whose request the search was made.

381. An officer in charge of a Police-station may, without a warrant, enter any shop or premises within the limits of such station, for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever he has reason to believe that there are, in such shop or premises, any weights, measures or instruments for weighing which are false.

Inspection of weights and measures.

If such officer finds, in such shop or premises, any weights, measures or instruments that are false, he may seize the same, and shall forthwith give information of such seizure to the Magistrate having jurisdiction.

Persons in charge of closed house to allow search.

382. Whenever any house or place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such house or place shall, on demand of the officer or other person executing the warrant, allow such officer or other person free ingress thereto, and afford all reasonable facilities for a search therein.

Place to be searched may be broken open.

383. A Police officer or other person, authorized by a warrant to search any house or place, may break open any outer or inner door or window of such house or place, in order to execute the warrant, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

Breaking of zanana.

384. If the place ordered to be searched is an apartment in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the officer or other person charged with the execution of the warrant shall give notice to such woman in such apartment, not being a woman against whom a warrant of arrest has been issued, that she is at liberty to withdraw.

After giving such notice and allowing a reasonable time for such woman to withdraw, and affording her every reasonable facility for withdrawing, such officer or person may enter such apartment for the purpose of completing the search, using at the same time every precaution consistent with these provisions for preventing the clandestine removal of property.

Search to be made in presence of witnesses.

385. Before conducting a search under this chapter, the officer conducting it shall call upon two or more respectable inhabitants of the place in which the house or place to be searched is situate, to attend and witness the search.

The search shall be made in their presence, but they shall not be required to attend the Court of the Magistrate as witnesses, unless specially summoned by him.

Occupant of place searched may attend.

The occupant of the house or place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search.

Mode of searching women.

386. Whenever it is necessary to cause a woman to be searched, the search shall be conducted with strict regard to the habits and customs of the country.

Search of arrested persons.

387. Whenever a person is arrested by the Police under a warrant which does not provide for the taking of bail,

or under a warrant which provides for the taking of bail, but the arrested person cannot furnish bail,

or is arrested without warrant and is not admitted to bail,

it shall be the duty of the arresting officer to search such person and to place in safe custody all articles, other than necessary articles of apparel, found on such person.

A list of such articles shall be forwarded with the daily diary or with the final report in the case.

PART IX.

PROCEDURE INCIDENTAL TO INQUIRY AND TRIAL.

CHAPTER XXVIII.—BAIL.

When bail shall be taken.

388. When any person appears or is brought before a Magistrate, accused of any bailable offence, he shall be admitted to bail.

Bail not to be taken for certain offences.

389. When any person accused of any non-bailable offence appears or is brought before a Magistrate, such person shall not be admitted to bail, if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

When bail may be taken.

If the evidence given in support of the accusation is, in the opinion of the Magistrate, not such as to raise a strong presumption of the guilt of the accused person,

or if such evidence is adduced on behalf of the accused person as, in the opinion of the Magistrate, weakens the presumption of his guilt, but there appears to the Magistrate, in either of such cases, to be sufficient grounds for further inquiry into his guilt,

the accused person shall be admitted to bail pending such inquiry.

Power to direct admission to bail.

390. The Court of Session may in any case, whether there be an appeal on conviction or not, direct that an accused person shall be admitted to bail, or that the bail required by a Magistrate be reduced.

Recognizance of accused and sureties.

391. When a Magistrate admits to bail any person accused or suspected of any offence, a recognizance, in such sum of money as the Magistrate thinks sufficient, shall be entered into by the person so accused, and one or more sureties, conditioned that such person shall attend at the time and place mentioned in the recognizance, and shall continue to attend until otherwise directed by the Court, and, if required, shall appear when called upon at the Court of Session or other Court, as the case may be, to answer the charge.

Insufficient bail.

392. If, through mistake or fraud, insufficient bail has been taken, or if the sureties become afterwards insufficient, the accused person may be ordered by the Magistrate to give sufficient bail or to find sufficient sureties, and, in default, may be committed to prison.

Bail may be taken at any time before conviction.

393. If the accused person cannot find sureties when called upon, he shall be admitted to bail upon finding the same at any time afterwards before conviction.

Discharge on bail.

394. After the recognizances have been duly entered into, the Magistrate, in case the accused person has appeared voluntarily or is in the custody of some officer, shall thereupon release him; and in case he is in some prison or other place of confinement, shall issue a warrant of release to the jailor or other person having him in his custody, and such jailor or other person shall thereupon release him.

Discharge of sureties.

395. Any one or more of the sureties for an accused person may, at any time, apply to the Magistrate to be discharged from their engagements.

On such an application being made, the Magistrate shall issue his warrant of arrest, directing that such person be brought before him.

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the recognizances of the sureties to be discharged, and shall call upon such person to find other sureties, and, in default, may order him to be committed to prison.

Procedure to compel payment of penalty by accused.

396. Whenever, by reason of default of appearance of the person executing the personal recognizance, the Magistrate is of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance, he shall proceed to enforce the penalty, by issuing a warrant for the attachment and sale of the moveable property belonging to such person; which may be found within the jurisdiction of the Magistrate of the District. Such warrant may be executed within the jurisdiction of the Magistrate of the District, and it shall authorize the distress and sale of any moveable property belonging to the accused person, without the jurisdiction of the said Magistrate, when endorsed by the Magistrate of the District in which such moveable property is situated.

Procedure to compel payment of penalty by sureties.

397. Whenever, by reason of default of appearance by the person bailed, the Magistrate is of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance of the surety or sureties, he shall give notice to the surety or sureties to pay the same, or to show cause why it should not be paid.

If such penalty be not paid and if no sufficient cause for its non-payment be shown, the Magistrate shall proceed to recover the penalty from such surety or sureties, by issuing a warrant for the attachment and sale of any moveable property belonging to him or them which may be found within the jurisdiction of the Magistrate of the District. Such warrant may be executed within the jurisdiction of the Magistrate of the

District; and it shall authorize the distress and sale of any moveable property belonging to the surety or sureties, without the jurisdiction of the said Magistrate, when endorsed by the Magistrate of the District in which such moveable property is situated.

If such penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the Magistrate, in the civil jail, during a period not exceeding six months.

In what cases the powers given by sections 396 and 397 may be exercised.

398. The powers given by sections three hundred and ninety-six and three hundred and ninety-seven may be exercised by every Criminal Court in every case in which a personal recognizance or bail has been given for the appearance of a party or witness, if default is made by the non-appearance of such party or witness before such Court, according to the conditions of such recognizance or bail:

Remission of part of penalty.

Provided that the Magistrate or Court may, at his or its discretion, remit any portion of the penalty mentioned in the recognizance of the [a]party or witness, or of the surety or sureties, and enforce payment in part only:

Revision of orders.

All orders passed by any Magistrate, other than the Magistrate of the District, under this section or section three hundred and ninety-six or three hundred and ninety-seven, shall be appealable to the Magistrate of the District, or, if not so appealed, may be revised by him.

High Court or Court of Session may direct Magistrate to levy sum forfeited.

A High Court or a Court of Session may direct any Magistrate to levy the amount due on a forfeited bail-bond executed in respect of attendance before such High Court or Court of Session.

Deposit may be made instead of bail.

399. When any person is required by any officer or Criminal Court to give bail, except in cases coming under chapter XXXVIII, such officer or Court may permit such person to deposit a sum of money or Government promissory notes to such amount as it may fix in lieu of such bail.

CHAPTER XXIX.—Formation of Lists of Jurors and Assessors and their Attendance.

List of jurors and assessors.

400. The Sessions Judge and the Collector of the District, or such other officer as the Local Government from time to time appoints in this behalf,[b] shall prepare and make out in alphabetical order a list of persons residing within ten miles from the place where trials before the Court of Session are held, or within such other distance as the Local Government

[a] Act No. XI of 1874, section 37.
[b] *British Burma Gazette*, 1873, Part II, p. 7.

thinks fit to direct,[a] who are, in the judgment of the Sessions Judge and Collector or other officer as aforesaid, qualified from their education and character to serve as jurors or as assessors, respectively.

The list shall contain the name, place of abode, and quality or business of every such person; and if the person is a European or an American, the list shall mention the race to which he belongs.

Publication of list.

401. Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the Court-houses of the Magistrate of the District and of the chief Civil Court, and in some conspicuous place in the town or towns near or in the vicinity of which the persons named in the list reside.

To every such copy shall be subjoined a notice, stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice.

Revision of list.

402. For the hearing of such objections, the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may avail himself of the exemption from service given by section four hundred and six, and insert the name of any person omitted from the list whom they deem qualified for such service.

In the event of a difference of opinion between the Collector or other officer as aforesaid and the Sessions Judge, the name of the proposed juror or assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid, and sent to the Court of Session.

Any order of the Sessions Judge and Collector or other officer as aforesaid, in preparing and revising the list, shall be final.

Annual revision of list.

403. The list so prepared and revised shall be again revised once in every year.

The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

Jurors and assessors.

404. All male persons between the ages of twenty-one and sixty, resident within the local limits of the jurisdiction of the Court of Session, except those hereinafter mentioned, shall be deemed capable of serving as jurors and assessors, and shall be liable to be summoned accordingly.

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[a] *Calcutta Gazette*, 1873, p. 259 · *Bombay Gazette*, 1873, pp. 6, 99.

405. The following persons are incapable of serving as jurors or as assessors, namely:— Disqualifications.

Persons who hold any office in or under the said Court:

Persons executing any duties of Police or entrusted with any Police functions:

Persons who have been convicted of any offence against the State, or of any fraudulent or other offence which, in the judgment of the Sessions Judge and Collector, renders them unfit to serve on the jury:

Persons afflicted with any infirmity of body or mind, sufficient to incapacitate them from serving:

Persons who, by habit or religious vows, have relinquished all care of worldly affairs.[a]

406. The following persons are exempt from the liability to serve as jurors or as assessors, namely:— Exemptions.

All officers in civil employ superior in rank to a Magistrate of the District:

Judges and other judicial officers:

Commissioners and Collectors of Revenue or Customs:

All persons engaged in the preventive service in the Customs Department:

All persons engaged in the collection of the revenue, whom the Collector thinks fit to exempt on the ground of official duty:

Chaplains and others employed in religious offices:

All persons in the military service,[b] except when, by any law in force for the time being, such persons are specially made liable to serve:

Surgeons and others who openly and constantly practise in the profession of physic:

Persons employed in the Post Office and Electric Telegraph Departments:

Persons actually officiating as priests in their respective religions:

All persons exempted by the Local Government;[c] and persons exempted by Government from personal appearance in Court, under the provisions of the Code of Civil Procedure, section twenty-two.

The exemption from service given by this section is a right of which each person exempted may avail himself or not. Person exempted is not bound to avail himself of his right of exemption.

Nothing contained in this section shall be construed to disqualify any such person, if he is willing to serve as a juror or as an assessor.

The Sessions Judge may issue a summons to any exempted person, to serve as an assessor or juror on the trial of a European British subject.

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[a] See, also, secs. 204 and 404 *supra*. [b] See Act No. IV of 1866, s. 30.
[c] *Oudh Gazette*, 29th Aug. 1874, p. 27.

Court to summon jurors.

407. The Court of Session shall ordinarily, three days at the least before the time fixed for the holding of the sessions, send a precept to a Magistrate directing him to summon as many persons named in the said revised list, as seem to the Court to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any case about to be tried at such sessions.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them; the names so drawn shall be specified in the precept to the Magistrate.

Summoning and empanelling jurors under section 234.

408. When a trial is to be held in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of section two hundred and thirty-four, the Court of Session shall, three days at least before the day fixed for holding such trial, cause to be summoned in the manner hereinafter prescribed, as many European and American jurors as are required for the trial, if there be so many on the jury list of the district in which the trial is to be held.

The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons shall have been already summoned for jury trials at that session.

From the whole number of persons returned, the jurors who are to constitute the jury shall be taken by lot in the manner prescribed in section two hundred and forty, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as possible, has been obtained.

If a jury containing the requisite number of Europeans and Americans is not obtained, the accused person may elect to be tried by the Judge with the aid of assessors; otherwise he shall be tried by the jury obtained by the means aforesaid.

Form and service of summons.

409. Every summons to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor at a time and place to be therein specified.

The summons or a copy thereof shall be served on every juror or assessor personally.

If the juror or assessor summoned be absent from his usual place of abode, the summons may be left for him there, with some adult male member of his family residing with him.

410. The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section four hundred and seven, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever it is found to be necessary.

Power to summon another set of jurors or assessors.

411. If any person summoned to serve as a juror or assessor be in the service of Government or of a railway company, the summons shall be sent to him through the head officer of the office in which he is employed; and the Court may excuse the attendance of such person if it appear, on the representation of such head officer, that the person summoned cannot serve as a juror or assessor without inconvenience to the public service.

Service of summons on officer of Government.

412. The Court of Session may excuse any juror or assessor from attendance for reasonable cause.

Court may excuse attendance of juror or assessor.

413. At each session, the Court shall cause to be made a list of the names of those who serve as jurors or assessors at such session.

List of jurors or assessors attending.

Such list shall be kept with the revised list of the jurors and assessors prepared under section four hundred and two.

A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

414. Any person summoned to attend as a juror or as an assessor, who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable, by order of the Court of Session, to a fine not exceeding one hundred rupees.

Penalty for non-attendance of juror or assessor.

Such fine shall be levied by the Magistrate of the District, by attachment and sale of any moveable property belonging to such juror or assessor within the jurisdiction of the Sessions Court making the order.

In default of recovery of the fine by such attachment and sale, such juror or assessor may be imprisoned in the civil jail for the space of fifteen days, if the fine be not sooner paid.

CHAPTER XXX.—Miscellaneous Provisions.

415. The seizure, by any Police officer, of property alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall thereupon make such order respecting the custody and production of such property as he thinks proper.

Procedure by Police upon seizure of stolen property.

Sale of perishable property.

If such property is of a perishable nature, or if it appears to the Magistrate that its sale would be for the benefit of the owner, such Magistrate may at any time direct it to be sold, and shall hold the proceeds of such sale in trust for the owner, subject to the provisions contained in sections four hundred and sixteen and four hundred and seventeen.

Procedure where owner of property seized unknown.

416. When the owner of any such property is unknown, the Magistrate may detain it, or the proceeds thereof, if sold, and, in case of such detention, shall issue a proclamation, specifying the articles of which such property consists or consisted, and requiring any person who may have a claim thereto or to the proceeds thereof, to appear before him and establish his claim within six months from the date of such proclamation.

Procedure if no claimant appears within six months.

417. If no person within such period establishes his claim to such property or proceeds, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Magistrate of the District, or a Magistrate of a Division of a District, or, if duly authorized,[a] a Magistrate of the First Class; or, if it has been already sold by the Magistrate, the proceeds thereof shall be at the disposal of the Government.

An appeal shall be allowed to the Court to which appeals against sentences would lie, in the case of every order passsd under this section.

Order for disposal of property regarding which offence committed.

418. When the[b] inquiry or trial in any Criminal Court is concluded, the Court may make such order as appears right for the disposal of any property produced before it, regarding which any offence appears to have been committed.

[c]EXPLANATION.—In this section the term 'property' includes not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.[d]

Stay of such order.

419. Any Court of appeal, reference or revision may direct any such order passed by a Court subordinate thereto to be stayed, and may modify, alter or annul it.

Order may take form of reference to

420. The order passed by any Court under section four hundred and eighteen or four hundred and nineteen, may be in the form of a reference of the

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[a] See sec. 34 *supra*: *Fort St. George Gazette*, 1873, p. 717: *Bombay Government Gazette*, 1873, p 16: *Panjáb Gazette*, 1873, p. 75: *Oudh Gazette*, 1873, p. 3.

[b, c] Act No. XI of 1874, section 38.

[d] Taken from the Larceny Act, 24 & 25 Vic., c. 96, s. 1.

property to the Magistrate of the District, or to a Magistrate of a Division of a District, who shall in such cases deal with it as if the property had been seized by the Police and the seizure had been reported to him in the manner hereinbefore mentioned.

Magistrate of District.

421. Subject to any rules that may be passed by the Local Government, with the previous sanction of the Governor General of India in Council,[a] the Criminal Courts may order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purpose of any trial before such Court under this Act.

Expenses of complainants and witnesses.

422. When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Interpreter to be bound to interpret truthfully.

CHAPTER XXXI.—LUNATICS.

423. When any person charged with an offence before a Magistrate competent to try the case appears to such Magistrate to be of unsound mind and incapable of making a defence, such Magistrate shall institute an inquiry to ascertain the fact of such unsoundness of mind, and shall cause the accused person to be examined by the civil surgeon of the district, or some other medical officer, and thereupon shall examine such civil surgeon or other medical officer as a witness, and shall reduce the examination into writing.

Procedure in case of accused being lunatic.

If such Magistrate is of opinion that the accused person is of unsound mind, he shall stay further proceedings in the case.

424. When, from the evidence given before a Magistrate, there appears to be sufficient ground for believing that the accused person committed an act which, if he had been of sound mind, would have been an offence triable exclusively by the Court of Session, and that he was at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law, such accused person shall, if he appears to be sane at the time of inquiry, be sent for trial by the Magistrate before the Court of Session.

When accused appears to have been insane.

If such accused person is a European British subject, the Magistrate shall follow the procedure prescribed in chapter VII.

If an accused person appears to be insane at the time of inquiry, the Magistrate shall act in the manner provided in the last preceding section.

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[a] *Calcutta Gazette,* 11th June 1873, p. 743: *Fort St. George Gazette,* 29th July 1873, p. 1225: *Bombay Govt. Gazette,* 21st August 1873, p. 693, 23rd Dec. 1873, p. 1063: *Panjáb Gazette,* 22nd Jany. 1874, part III, p. 35: *N.-W. Provinces Gazette,* 7th Aug. 1875, p. 1076: *Oudh Gazette,* 17th Jany. 1874, part II, p. 34: *Central Provinces Gazette,* 12th July 1873, p. 115. *British Burma Gazette,* 12th July 1873, part II, p. 143.

Procedure in case of person committed before a Court of Session being lunatic.

425. If any person committed for trial before a Court of Session shall, at his trial, appear to the Court to be of unsound mind and incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness of mind, and if satisfied of the fact, shall give a special judgment that the accused person is of unsound mind and incapable of making his defence; and thereupon the trial shall be postponed.

[a] The trial of the fact of the unsoundness of mind of the accused person shall be deemed to be part of his trial before the Court.

Release of lunatic pending investigation or trial.

426. Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court of Session, as the case may be, if the offence of which such person is accused be bailable, may release such person on sufficient security being given that he shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, and for his appearance when required.

Custody of lunatic.

If the offence be not bailable, or if the required bail be not given, the accused person shall be kept in safe custody in such place as the Local Government[b] to which the case shall be reported shall direct.

Resumption of inquiry or trial.

427. Whenever an inquiry or trial is postponed under section four hundred and twenty-three or section four hundred and twenty-five, the Magistrate or Court of Session, as the case may be, may at any time resume the inquiry or trial, and require the accused person, if detained in custody, to be brought before such Magistrate or Court; or, if the accused person has been released on security, may require his appearance.

The surety of such person shall be bound, at any time, to produce him to any officer whom the Magistrate or Court of Session appoints to inspect him; and the certificate of such officer shall have the same effect as the certificate of an Inspector General of Prisons or the visitors of lunatic asylums, granted under section four hundred and thirty-two.

Procedure on accused appearing before Magistrate or Court of Session.

428. If, when the accused person appears or is again brought before the Magistrate or the Court of Session, as the case may be, it appears to such Magistrate or Court that the accused person is in a fit state of mind to make his defence, the inquiry shall proceed, or the accused person shall be put on his trial, as the case may require.

If it appears that the accused person is still of unsound mind, and incapable of making his defence, the Magistrate or Court of Session shall again act according to the provisions of section four hundred and twenty-three or section four hundred and twenty-five.

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[a] Act No. XI of 1874, section 39. 10 Beng. Appendix, 10.
[b] As to Sindh, see *Bombay Govt. Gazette*, 1874, p. 312.

429. Whenever any person is acquitted upon the ground that, at the time at which he is charged with having committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law, the finding shall state specially whether such person committed the act or not.

Finding in case of acquittal on ground of being lunatic.

430. Whenever such finding states that the accused person committed the act charged, the Magistrate or Court of Session before whom the trial was held shall, if the act charged would, but for the incapacity found, have amounted to an offence, order such person to be kept in safe custody, in such place and manner as to the Magistrate or Court of Session seems fit, and shall report the case for the order of the Local Government.[a]

Person so acquitted to be kept in safe custody.

The Local Government[a] may order such person to be kept in safe custody in a lunatic asylum or other suitable place of safe custody.

431. When any person is confined under the provisions of section four hundred and twenty-six or section four hundred and thirty, the Inspector General of Prisons, if such person is confined in a jail, or the visitors of the lunatic asylums or any two of them, if he is confined in a lunatic asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector General or by two of such visitors as aforesaid; and such Inspector General or visitors shall make a special report to the Local Government as to the state of mind of such person.

Lunatic prisoners to be visited by Inspector General.

432. If such person is confined under section four hundred and twenty-six, and such Inspector General or visitors as aforesaid shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court of Session, as the case may be, at such time as such Magistrate or Court of Session appoints, and such Magistrate or Court shall deal with such person under the provisions of section four hundred and twenty-eight; and the certificate of such Inspector General or visitors as aforesaid shall be receivable as evidence.

Procedure where lunatic prisoner is reported capable of making his defence.

433. If such person is confined under the provisions of section four hundred and thirty, and such Inspector General or visitors as aforesaid certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government[a] may thereupon either order him to be discharged, or to be detained in custody, or to be transferred to a public lunatic asylum, if he has not been already sent to such an asylum; and may appoint a commission, consisting of a judicial officer not

Procedure where lunatic confined under section 430 is declared capable of being discharged.

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[a] As to Sindh, see *Bombay Govt. Gazette*, 1874, p. 312.

below the grade of a Sessions Judge, and two medical officers, whereof the chief medical officer attached to the lunatic asylum shall be one.

The said commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government,[a] who may order his discharge or detention as to it may seem fit.

Delivery of lunatic to care of relative.

434. Whenever any relative or friend of any person detained under the provisions of section four hundred and thirty is desirous that he shall be delivered over to his care and custody, the Local Government,[a] upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person detained shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may make an order that such person may be delivered to such relative or friend.

Whenever such person is so delivered over, it shall be upon condition that he shall be subject to the inspection of such officer as the Local Government[a] appoints, and at such times as such Government directs.

The provisions of sections four hundred and thirty-one and four hundred and thirty-three shall apply to persons detained under the provisions of this section; and the certificate of the Inspecting Officer appointed under this section shall be dealt with as a certificate of the Inspector General of Prisons, or the visitors of lunatic asylums, under the said sections.

CHAPTER XXXII.—Contempts of Court.

Procedure in certain cases of contempt.

435. When any such offence as is described in sections one hundred and seventy-five, one hundred and seventy-eight, one hundred and seventy-nine, one hundred and eighty, or two hundred and twenty-eight of the Indian Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender, whether he be a European British subject or not, to be detained in custody; and, at any time before the rising of the Court on the same day, may take cognizance of the offence, and adjudge the offender to punishment by fine not exceeding two hundred rupees, and, in default of payment, by imprisonment in the civil jail for a period not exceeding one month, unless such fine be sooner paid.

In every such case, the Court shall record the facts constituting the offence, with any statement the offender may make, as well as the finding and sentence.

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[a] As to Sindh, see *Bombay Govt. Gazette*, 1871, p. 34.

If the offence is under section two hundred and twenty-eight of the Indian Penal Code,[a] the record must show the nature and stage of the judicial proceeding in which such public servant was sitting, and the nature of the interruption or insult offered.

Procedure where Court considers that accused should be imprisoned, or fined more than 200 rupees.

436. If the Court in any case considers that a person accused of any such offence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, such Court, after recording the facts constituting the offence, and the statement of the accused person as before provided, shall forward the case to a Magistrate, or, if the accused person be a European British subject, to a Magistrate of the First Class who is a Justice of the Peace and a European British subject; and shall cause bail to be taken for the appearance of such accused person before such Magistrate, or, if sufficient bail be not tendered, shall cause such person to be forwarded under custody to such Magistrate.

If the case be forwarded to a Magistrate, he shall proceed to try the accused person in the manner provided by this Act for trials before a Magistrate; and such Magistrate may adjudge the offender to punishment, as provided in the section of the Indian Penal Code under which he is charged.

If, in the case of a European British subject, the Magistrate to whom he is forwarded considers the offence to require a more severe punishment than he is competent to award under chapter VII of this Act, he may commit the offender to the Sessions Court.

In no case tried under this section shall any Magistrate adjudge imprisonment, or a fine exceeding two hundred rupees, for any contempt committed in his own presence against his own Court.

Discharge of offender on submission or apology.

437. When any Court has adjudged an offender to punishment, or forwarded him to a Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may discharge the offender, or remit the punishment, on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

Procedure when offender is a European British subject.

438. When any such offence as is described in chapter X of the Indian Penal Code (except sections one hundred and seventy-five, one hundred and seventy-eight, one hundred and seventy-nine, one hundred and eighty, and two hundred and twenty-eight) is committed in contempt of the lawful authority of any Civil, Criminal or Revenue Court by a European British subject, such offence shall be cognizable only by a Magistrate of the First Class who is a Justice of the Peace and a European British subject; and such

[a] See sec. 4 *supra*.

Magistrate may deal with the offender, on conviction, in the same manner as is provided in that behalf in section seventy-four.

If such Magistrate considers the offence to require a more severe punishment than he is competent to award under the said section, he may commit the offender to the Sessions Court.

PART X.

CHARGE, JUDGMENT AND SENTENCE.

CHAPTER XXXIII.—Of the Charge.

Form of Charges.

Charge to state offence.

439. The charge shall state the offence with which the accused person is charged.

Specific name of offence, sufficient statement.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

How stated where offence has no specific name.

If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the prisoner notice of the matter with which he is charged.

The Act and section or sections of the Act against which the offence is said to have been committed must be referred to in the charge.

What implied in charges.

The fact that the charge is made shall be equivalent to a statement that every legal condition, necessary by law to constitute the offence charged, was fulfilled in the particular case.

Language of charge.

The charge may be written either in English or in the language of the district. If not written in a language understood by the prisoner, it must be read[a] to him in a language which he understands.

Previous conviction to be set out in charge.

If the accused person has been previously convicted of any offence,[b] and if it is intended to prove such previous conviction for the purpose of affecting the punishment which is to be awarded, the fact of the previous conviction must be stated in the charge. If it is omitted, it may be added at any time before sentence is passed, but not afterwards.

Illustrations.

(*a.*) A is charged with the murder of B.

This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall

[a] *i. e.*, interpreted.

[b] See Act No. XLV of 1860, s. 75, Act No. VI of 1864, ss. 3 and 4, and secs. 315 and 326 *supra*.

within any of the general exceptions of the Penal Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within exception I, one or other of the three provisos to that exception applied to it.

(*b.*) A is charged, under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to B, by means of an instrument for shooting: this is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(*c.*) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(*d.*) A is charged, under section 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

Particulars as to time, place and person.

440. The charge shall contain such particulars as to the time and place of the alleged offence and the person against whom it was committed, as are reasonably sufficient to give notice to the accused person of the matter with which he is charged.

When manner of committing offence must be stated.

441. When the nature of the case is such that the particulars mentioned in sections four hundred and thirty-nine and four hundred and forty do not give sufficient notice to the accused person of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations.

(*a.*) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b.*) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(*c.*) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(*d.*) A is accused of obstructing B, a public servant, in discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(*e.*) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(*f.*) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

Forms in schedule.

442. The charge may be in the form given in the third schedule to this Act or to the like effect.

Effect of errors.

443. No error, either in the way in which the offence is stated, or in the particulars required to be stated in section four hundred and forty-one, and no omission to state the offence, or to state those particulars, shall be regarded at any stage of the case as material, unless the person accused was in fact misled by such error or omission.

Illustrations.

(*a.*) A is charged, under section 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit;" the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(*b.*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c.*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(*d.*) A is charged with the murder of Khodá Baksh on the 21st January. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(*e.*) A was charged with murdering Haidar Baksh on the 20th January, and Khodá Baksh (who tried to arrest him for that murder) on the 21st January. When charged for the murder of Haidar Baksh, he was tried for the murder of Khodá Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

Prisoner may apply for amendment.

444. Any accused person may apply to the Court by which he is tried for an amendment of the charge made against him; and in considering whether any error in a charge did in fact mislead the accused person, the Court shall take into account the fact that he did or did not make such an application.

Court may amend a charge.

445. Any Court may, either upon the application of the accused person, or upon its own motion, amend or alter any charge at any stage of the pro-

ceedings before judgment is signed, or, in cases of trials before a Court of Session, before the verdict of the jury is delivered or the opinion of the assessors is expressed. Such amendment shall be read and explained to the accused person.

How Court of Session may deal with charge.

446. If a prisoner is committed to the Court of Session, either without any charge at all, or upon a charge which the Court, upon reference to the proceedings before the committing Magistrate, considers improper, the Court of Session may draw up a charge for any offence which it considers to be proved by the evidence taken before the committing Magistrate. A copy of such charge shall be given to the accused person.[a]

When trial may proceed immediately after amendment.

447. If the amendment or alteration is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused person in his defence, it shall be at the discretion of the Court, after making such amendment or alteration, to proceed with the trial as if the amended charge had been the original charge.

When new trial may be directed or trial suspended.

448. If the amendment or alteration is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused person in his defence, the Court may either direct a new trial, or suspend the trial for such period as may be necessary to enable the accused person to make his defence to the amended or altered charge; and, after hearing his defence, the Court may further adjourn the trial, to admit of the appearance of any witness whose evidence the Court may consider to be material to the case, or whom the accused person may wish to be summoned in his defence.

Power to recall witnesses when charge altered.

449. In all cases of amendment or alteration of a charge, the prosecutor and accused person shall be allowed to recall and examine any witness who may have been examined.

Sanction to be obtained if necessary for prosecution of offence in new charge.

450. If the offence stated in the new charge be one for which[b] previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained; unless sanction has been already obtained for a prosecution on the same facts as those on which the new charge was based.

Effect of material error.

451. If any Appellate Court, or the High Court in the exercise of its powers of revision, is of opinion that any person convicted of an offence was in fact misled in his defence by an error in the charge, it shall direct a new trial to be had upon a charge amended in whatever manner it thinks proper.

If such Court is of opinion that the facts of the case are such that no valid charge could be preferred against the person accused in respect of the facts proved, it shall quash the conviction.

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a compare ss 199 and 439 *supra*.

b *Sic*. Read 'for the prosecution of which.'

Illustration.

[a] A is convicted of an offence under section 196 of the Indian Penal Code upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine, was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

Joinder of Charges.

Separate charges for distinct offences.

452. There must be a separate charge for every distinct offence of which any person is accused, and every such charge must be tried separately, except in the cases hereinafter excepted.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and the causing grievous hurt.

More offences than one of same kind may be charged within a year of each other.

453. When a person is accused of more offences than one of the same kind, committed within one year of each other, he may be charged[b] and tried at the same time for any number of them not exceeding three.

EXPLANATION.—Offences are said to be of the same kind under this section if they fall within the provisions of section four hundred and fifty-five.[c]

I.—Trial of more than one offence.

454. I.—If in one set of facts, so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried for every such offence at the same time.

II.—One offence falling within two definitions.

II.—If a single act falls within two separate definitions of any law in force for the time being, by which offences are defined or punished, the person who does it may be charged with each of the offences so committed, but he must not receive a more severe punishment than could be awarded, by the Court which tries him, for either.

III.—Acts severally constituting more than one offence, but collectively coming within one definition.

III.—If several facts, of which one or more than one would by itself constitute an offence, form, when combined, an offence under the provisions of any law in force for the time being, by which offences are defined or punished, a person who does them may be charged with every offence which he may have committed, but he must not receive for such offences, collectively, a punishment more severe than that which might have been awarded, by the Court trying him, for any one of such offences, or for the offence formed by their combination.[d]

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[a] Act No. XI of 1874, section 40.
[b] Read 'charged with.'
[c] *Re Nouyan*, 7 Mad. 376.
[d] 7 Mad. 377.

Illustrations.

To paragraph I.

(*a.*) A rescues B, a person in lawful custody, and [a] causes grievous hurt to C, a constable in whose custody B was. A may be separately charged with, convicted of, and punished for, offences under sections 225 and 333, Indian Penal Code.

(*b.*) A has in his possession several counterfeit seals with the intention of committing several forgeries.[b] A may be separately charged with, convicted of, and punished for, the possession of each seal for a distinct forgery under section 473, Indian Penal Code.

(*c.*) A, with intent to cause injury to B, institutes proceedings [c] against him, knowing there is no just or lawful ground for such proceedings. A also falsely charges B with having committed an offence.[d] A may be separately charged with, convicted of, and punished for, two offences under section 211, Indian Penal Code.

(*d*) A, with intent to injure B, brings a false charge against him of having committed an offence.[e] On the trial, A gives false evidence against B.[f] A may be separately charged with, convicted of, and punished for, offences under sections 211 and 194 or 195, Indian Penal Code.

(*e.*) A, knowing that B, a female minor, has been kidnapped,[g] wrongfully confines her and detains her [h] as a slave. A may be separately charged with, convicted of, and punished for, offences under sections 368 (read with 367) and 370, Indian Penal Code.

(*f.*) A, with six others, commits the offences of rioting, grievous hurt, and of assaulting a public servant engaged in suppressing [i] the riot. A may be separately charged with, convicted of, and punished for, offences under sections 147, 325 and 152, Indian Penal Code.

(*g.*) A criminally intimidates B, C and D at the same time. A may be separately charged with, convicted of, and punished for, each of the three offences under section 506, Indian Penal Code.

(*h.*) A intentionally causes the death of three persons by upsetting a boat. A may be separately charged with, convicted of, and punished for, three offences under section 302, Indian Penal Code.[j]

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[a] in so doing.

[b] This probably means 'A has in his possession several seals which he knows to be counterfeit and intends to use for the purpose of committing several forgeries punishable under sec. 466 of the Indian Penal Code.'

[c] Read 'a criminal proceeding.'

[d] knowing that there is no just or lawful ground for such charge.

[e] A knowing that there is no just or lawful ground for such charge.

[f] intending thereby to cause B to be convicted of an offence which by the Indian Penal Code is capital, or with one which by the same Code is punishable with transportation for life.

[g] in order that she may be subjected to grievous hurt, see 7 Mad. 376.

[h] against her will.

[i] Read 'endeavouring, in the discharge of his duty as such, to suppress.'

[j] The separate charges referred to in illustrations (*a*) to (*h*) respectively may be tried at the same time.

To paragraph II.

(*i.*) A commits mischief by cutting down a tree in a Government forest. The tree overhangs the bank of a river and falls into the stream. A commits theft by having severed the tree and by floating it down the river to his village, where he sells it. A may be separately charged with, and convicted of, offences under sections 426 and 379, Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under section 379 only.

(*j.*) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under section 323 only.

(*k.*) A wrongfully kills a buffalo worth sixty rupees belonging to B, and then takes away the carcase in a manner amounting to theft.[a] A may be separately charged with, and convicted of, offences under sections 429 and 379, Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under section 429 only.

(*l.*) Several stolen sacks of corn are made over to A and B, who know they are stolen property. A and B thereupon assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414, Indian Penal Code; but the Court which tries them may not inflict a severer sentence than if it had convicted them under one of those sections only.

(*m.*) A uses a forged document in evidence, in order to convict B, a public servant, of an offence under section 167.[b] A may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under one of those sections[c] only.

To paragraph III.

(*n.*) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497, Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under section 497 only.

(*o.*) A robs B, and, in doing so, voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under section 392 or 394 only.

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[a] Read 'and then moves the carcass in order to take it dishonestly out of B's possession without B's consent.'

[b] Read 'In order to convict B, a public servant, of an offence under sec. 167 of the Indian Penal Code, A uses as genuine evidence a document purporting to be a record of a Court of Justice, which he knows to be forged.'

[c] *i. e.*, secs. 471 and 196.

(*p.*) A entices B, the wife of C, away,[a] and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497, Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under section 497 only.

455. If a single act or set of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused person may be charged with having committed any such offence; and any number of such charges may be tried at once, or he may be charged in the alternative with having committed some one of the said offences.

Where it is doubtful what offence has been committed.

Illustration.

A is accused of an act which may amount to either theft, receiving stolen property, criminal breach of trust, or cheating. He may be charged separately with theft, criminal breach of trust, and cheating, or he may be charged with having committed either theft, or criminal breach of trust, or cheating.

456. If, in the case mentioned in the last section, one charge only is brought against an accused person, and it appears in evidence that he committed a different offence, for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

When a person is charged with one offence, he can be convicted of another.

Illustration.

A is charged with theft. It appears that he committed criminal breach of trust, or receiving stolen goods. He may be convicted of criminal breach of trust, or receiving stolen goods, though he was not charged with it.

457. When a person is charged with an offence, and part of the charge is not proved, but the part which is proved amounts to a different offence, he may be convicted of the offence which he is proved to have committed, though he was not charged with it.[b]

When offence proved included in offence charged.

Illustrations.

(*a.*) A is charged, under section 407, Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(*b.*) A is charged with murder. He may be convicted of culpable homicide or of causing death by negligence.

458. When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together, or separately,

What persons may be charged jointly.

a *Read* 'away from C with intent to commit adultery with her.'
b *Reg.* v. *Chánd Nur*, 11 Bomb. 240.

as the Court thinks proper, and the provisions hereinbefore contained shall apply to all such charges.

Illustrations.

(*a.*) A and B are accused of the same murder. A and B may be charged and tried together for the murder.

(*b.*) A and B are accused of a robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.

(*c.*) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with the one theft, and B alone with the two other thefts.

Withdrawal of remaining charges, on conviction on one of several charges.

459. In trials before a Court of Session or High Court, when more charges than one are preferred against the same person, and when a conviction has been had on one or more of them, the Government Pleader or other officer conducting the prosecution may, with the consent of the Court, withdraw, or the Court of its own accord may suspend, the inquiry into the remaining charge or charges.

Previous Acquittals or Convictions.

Person once convicted or acquitted not to be tried for same offence.

460. A person who has once been tried for an offence and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried again on the same facts for the same offence, nor for any other offence for which a different charge from the one made against him might have been made under section four hundred and fifty-five, or for which he might have been convicted under section four hundred and fifty-six.

A person convicted or acquitted of any offence may be afterwards tried for any offence for which a separate charge might have been made against him on the former trial under section four hundred and fifty-four, paragraph I.

A person acquitted or convicted of any offence in respect of any act causing consequences which, together with such act, constituted a different offence from that for which such person was acquitted or convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was acquitted or convicted.

A person acquitted or convicted of any offence in respect of any facts may, notwithstanding such acquittal or conviction, be subsequently charged with and tried for any other offence which he may have committed in respect of the same facts, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Illustrations.

(*a.*) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards be charged, upon the same facts, either with theft as a servant, with theft simply, or with criminal breach of trust.

(*b.*) A is tried upon a charge of murder and acquitted. There is no charge of robbery ; but it appears from the facts that A committed robbery at the time when the murder was committed ; he may afterwards be charged with, and tried for, robbery.

(*c.*) A is tried for an assault and convicted. The person afterwards dies. A may be tried again for culpable homicide.

(*d.*) A is tried under section 270 of the Indian Penal Code for malignantly doing an act likely to spread the infection of a disease dangerous to life and is acquitted. The act so done afterwards causes a person permanently to lose his eyesight. A may be charged, under section 325, with voluntarily causing grievous hurt to that person.

(*e.*) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried for the murder of B on the same facts.

(*f.*) A is charged by a Magistrate of the First Class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B, on the same facts, unless the case comes within paragraph three.

(*g.*) A is charged by a Magistrate of the Second Class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(*h.*) A, B and C are charged by a Magistrate of the First Class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for dacoity on the same facts.

CHAPTER XXXIV.—Of the Judgment, Order and Sentence.

Judgment to specify offence.

461. When the trial in any Criminal Court is concluded, the Court, in passing judgment, if the accused person be convicted, shall distinctly specify the offence of which, and the section of the Indian Penal Code or other law under which he is convicted ;

Judgment in the alternative.

or, if it be doubtful under which of two sections, or under which of two parts of the same section, such offence falls, the Court shall distinctly express the same, and pass judgment in the alternative, according to section seventy-two of the said Code.

When judgment is to be pronounced.

462. In trials with assessors, when the exhibits have been perused, the witnesses examined, and the parties heard in person or by their respective pleaders, the Court shall pronounce its judgment. The judgment shall be pronounced in open Court, either immediately, or on some future day, of which due notice shall be given to the parties or their pleaders.

Judgment to be written in English, or language of district. Proviso.

463. The judgment or final order shall be written by the presiding officer of the Court in English, or the language of the district.

If the language of the Judge[a] be not English, the judgment shall not be written in English, unless the Judge[b] be sufficiently conversant with the English language to be able to write a clear and intelligible decision in that language.

Judgment what to contain

464. The judgment or final order shall contain the point or points for determination, the finding thereupon, and the reasons for the finding, and shall be dated and signed by the Judge in open Court at the time of pronouncing it. When a judgment or final order has been so signed, it cannot be altered or reviewed by the Court which gives such judgment or order. It shall specify the offence of which the accused person is convicted, and the punishment to which he is sentenced; or, if it be a finding of acquittal, it shall direct that he be set at liberty.

[c] The judgment or order shall be explained to the accused person or person affected by it, and on his application a copy thereof shall be given to him without delay free of cost and in his own language, if practicable; if not, in the language of the Court.

Judgment to be translated.

The original shall be filed with the record of proceedings, and a translation thereof, where the original is recorded in a different language from that in ordinary use in the district, shall be incorporated in the record of the case.

In trials by jury, the Court need not state its reasons for its judgment, but shall record the heads of the charge to the jury.

If the Judge differ from the jury and determine to submit the case to the High Court, he shall record the grounds of his opinion.

Nothing herein contained shall prevent any Court from recalling any order other than a final order.

No error or defect in any judgment shall invalidate the proceedings [c] where such error or defect is in a matter not affecting the merits of the case.

CHAPTER XXXV.—Prosecutions in certain Cases.

Prosecutions for offences against the State.

465. A complaint[d] of an offence punishable under chapter VI of the Indian Penal Code, except section one hundred and twenty seven, or punishable under section two hundred and ninety-four A of the said Code, shall not be entertained by any Court, unless the prosecution be instituted by order of, or under authority from, the Governor General of India in Council or the Local Government, or some officer empowered by the Governor General in

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[a] Read 'such officer.' [b] Read 'he.' [c] Act No. XI of 1874, section 41.
[d] See sec. 470, Explanation *infra*.

Council to order or authorize such prosecution, or unless instituted by the Advocate General.

466. A complaint[a] of an offence committed by a public servant in his capacity as such public servant,[b] of which any Judge or any public servant not removeable from his office without the sanction of the Government is accused as such Judge or public servant, shall not be entertained against such Judge or public servant, except with the sanction or under the direction of the Local Government, or of some officer empowered by the Local Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power so to sanction or direct such prosecution the Local Government shall not think fit to limit or reserve.

Prosecution of Judges and public servants.

No such Judge or public servant shall be prosecuted for any act purporting to be done by him in the discharge of his duty, unless with the sanction of Government.

The sanction must be given before the commencement of the proceedings.

Sanction when to be given.

The Local Government may limit the person by whom,[c] and the manner in which, the prosecution is to be conducted, and may specify the Court before which the trial is to be held.

Power of Local Government.

[d] In this section the expressions 'Judge' and 'public servant' shall be taken to have the meaning assigned to them respectively by the Indian Penal Code.

467. A complaint[a] of any offence described in chapter X of the Indian Penal Code, not falling within section four hundred and thirty-five or four hundred and thirty-six of this Act, shall not be entertained in any Criminal Court, except with the sanction or on the complaint of the public servant concerned, or of his official superior.

Prosecution for contempts of the lawful authority of public servants.

The prohibition contained in this section shall not apply to the offences described in sections one hundred and eighty-nine and one hundred and ninety of the Indian Penal Code.

468. A complaint[a] of an offence against public justice, described in section one hundred and ninety-three, one hundred and ninety-four, one hundred and ninety-five, one hundred and ninety-six, one hundred and ninety-nine, two hundred, two hundred and five, two hundred and six, two hundred and seven, two hundred and eight, two hundred and nine, two hundred and ten, two hun-

Prosecution for certain offences against public justice.

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[a] See sec. 470, Explanation *infra*.

[b] This "relates only to those acts and omissions which are declared in the Penal Code to be offences when they are committed by a public servant," 7 Bomb. 63.

[c] See *Fort St George Gazette*, 1873, pp 1437, 1544.

[d] Act No. XI of 1874, section 42.

dred and eleven, or two hundred and twenty-eight of the Indian Penal Code, when such offence is committed before or against a Civil or Criminal Court, shall not be entertained in the Criminal Courts, except with the sanction of the Court before or against which the offence was committed, or of some other Court to which such Court is subordinate.[a]

Prosecution for certain offences relating to documents given in evidence.

469. A complaint of an offence relating to documents, described in section four hundred and sixty-three, four hundred and seventy-one, four hundred and seventy-five, or four hundred and seventy-six of the Indian Penal Code, when the document has been given in evidence in any proceedings in any Civil or Criminal Court, shall not be entertained against a party to such proceedings, except with the sanction of the Court in which the document was given in evidence, or of some other Court to which such Court is subordinate.

Nature of sanction necessary.

470. The sanction referred to in sections four hundred and sixty-seven, four hundred and sixty-eight and four hundred and sixty-nine, may be expressed in general terms, and need not name the accused person.[b]

Such sanction may be given at any time, and a sanction under any one of the three last preceding sections shall be deemed sufficient authority for the Court to amend the charge to one of an offence coming within either of the two remaining sections, if the facts disclose such offence.

EXPLANATION.—In cases under this chapter, the report or application of the public servant or Court shall be deemed sufficient complaint.

Procedure in cases mentioned in sections 467, 468 and 469.

471. When any Court, Civil or Criminal, is of opinion that there is sufficient ground for inquiring into any charge[c] mentioned in sections four hundred and sixty-seven, four hundred and sixty-eight and four hundred and sixty-nine, such Court, after making such preliminary inquiry as may be necessary, may either commit the case itself, or may send the case for inquiry to any Magistrate having power to try or commit for trial the accused person for the offence charged.

Such Magistrate shall thereupon proceed according to law; and the Court may send the accused person in custody, or take sufficient bail for his appearance before such Magistrate; and may bind over any person to appear and give evidence on such trial or inquiry.

The Magistrate receiving the case may, if he is authorized to make transfers of cases, transfer the inquiry to some other competent Magistrate, instead of completing the inquiry himself.

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[a] See 22 Suth W. R. Cr. Rulings, 11.

[b] But it shall so far as practicable specify the court or other place in which, and the occasion on which, the offence is alleged to have been committed, *Bálaji Sitárám*, 11 Bomb. 36.

[c] Read 'complaint.'

472. A Court of Session may charge a person for any such offence committed before it, or under its own cognizance,[a] if the offence be triable by the Court of Session exclusively, and may commit, or hold to bail and try, such person upon its own charge.

Power of Court of Session as to such offences committed before itself.

In such case, the Court of Session shall have the same power of summoning, and causing the attendance at the trial, of any witnesses for the prosecution or for the defence, as is vested in a Magistrate by this Act.

Such Court may direct the Magistrate to cause the attendance of such witnesses on the trial.

473. Except as provided in sections four hundred and thirty-five, four hundred and thirty-six and four hundred and seventy-two, no Court shall try any person for an offence committed in contempt of its own authority.[b]

Contempts of Court.

474. In any case triable by the Court of Session exclusively, any Civil Court before which such offence was committed may, instead of sending the case for inquiry to a Magistrate, complete the inquiry itself, and commit or hold to bail the accused person to take his trial before the Court of Session.

Power of Civil Courts to complete inquiry and commit to Court of Session.

For the purposes of an inquiry under this section, the Civil Court may exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be deemed to have been held by a Magistrate.

If a Civil Court sends a case for inquiry and commitment to a Magistrate, he is bound to receive and dispose of it; but if a Civil Court makes a commitment, it shall complete the inquiry itself.

475. When any such commitment is made by order of a Civil Court, the Court shall frame a charge in the manner hereinbefore provided, and shall send the same with the order of commitment and the record of the case to the Magistrate of the District, or other Magistrate of the First Class; and such Magistrate shall bring the case before the Court of Session, together with the witnesses for the prosecution and defence.

Procedure of Civil Court in such cases.

476. Whenever any Court of Session or Civil Court commits or holds to bail any person for trial under section four hundred and seventy-two, four hundred and seventy-four, or four hundred and seventy-five, it may also bind over any person to give evidence, and for that purpose may exercise all the powers of a Magistrate.

Court may bind over persons to give evidence.

477. If any such offence, triable by the Court of Session exclusively, be committed before a Magistrate not empowered to commit for trial before a Court of Session, he shall send the case to a Magistrate competent to make

Procedure where offence triable only by Session Court is committed before Magistrate not empowered to commit to such Court

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[a] *Queen* v. *Nomal*, 4 Beng. Appell. Crim. 9, a decision on the corresponding sec of Act XXV of 1861.

[b] 10 Bomb. 424 11 Bomb. 98 7 Mad Appendix, xvii, xxviii.

such commitment, who shall proceed to pass such order in the case as he thinks fit.

Prosecution for adultery.

478. A complaint of an offence under section four hundred and ninety-seven of the Indian Penal Code shall not be instituted, except by the husband of the woman, or by any person under whose care she was living at the time when the adultery was committed.

Prosecution for enticing away a married woman.

479. A complaint of an offence under section four hundred and ninety-eight of the Indian Penal Code shall not be instituted, except by the husband of the woman, or by the person having care of such woman on behalf of her husband.

PART XI.

PREVENTIVE JURISDICTION OF MAGISTRATES.

CHAPTER XXXVI.[a]—Of the Dispersion of Unlawful Assemblies.

Assembly to disperse on command of Magistrate or Police officer.

480. Any Magistrate or officer in charge of a Police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

Use of force to disperse.

481. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a Police-station may proceed to disperse such assembly by force, and may require the assistance of any person, other than any European or Native troops of Her Majesty acting as such, for the purpose of dispersing it, and arresting the persons who form part of it.

Use of military force.

482. If an unlawful assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

When use of military force is not an offence.

483. No Magistrate shall be held to commit any offence by ordering the dispersion, by military force, of any assembly, the dispersion of which he regards, on reasonable grounds and in good faith,[b] as necessary to the public security.

Duty of officer commanding

484. When a Magistrate determines to disperse an assembly by military force, he may require any officer in command of any of Her Majesty's troops,

[a] Act No. XI of 1874, section 43, extends this chapter to the Presidency Towns, and declares that the word "Magistrate," wherever it occurs in such chapter, shall be deemed to include a Magistrate of Police.

[b] See Act No. XLV of 1860, ss. 52 and 76.

whether European or Native, to disperse such assembly by such force, and it shall be the duty of every such officer to obey every such requisition in such manner as in his discretion appears proper; but in doing so, he shall use as little force, and do as little injury to person and property, as is consistent with dispersing the assembly and arresting and detaining such persons as he may be directed by the Magistrate to arrest and detain, or as it may be necessary to arrest and detain for the purpose of dispersing the assembly.

troops required by Magistrate to disperse assembly.

485. No officer obeying any such requisition shall be held to have committed any offence by any act done by him in good faith in order to comply with it.

What acts done in obeying requisition not an offence.

486. No inferior officer or private soldier shall be held to have committed any offence by any act done for the dispersion of any such assembly in obedience to any order which he was bound by the Mutiny Act or by the Indian Articles of War to obey.

Acts of inferior officers and soldiers, done in obedience to order, not an offence.

487. When the public security is manifestly endangered by an unlawful assembly, and when no Magistrate can be communicated with, any commissioned officer of Her Majesty's European or Native Forces may disperse any such assembly by military force; and in doing so, he shall have the same protection as a Magistrate, and all officers and soldiers acting under his orders shall have the protection mentioned in section four hundred and eighty-six; but as soon as such commissioned officer can communicate with any Magistrate, it is his duty to do so.

Duty of Queen's officers to suppress assembly.

488. No prosecution against any Magistrate, officer or soldier, for any act done under the provisions contained in sections four hundred and eighty-one, four hundred and eighty-two, four hundred and eighty-four and four hundred and eighty-seven, shall be instituted in any Criminal Court, except with the sanction of the Government of India, or the Government of Madras or Bombay.

Sanction required to prosecutions for acts done under sections 481, 482, 484 and 487.

CHAPTER XXXVII.—Of Security for keeping the Peace.

489. Whenever a person accused of rioting, assault or other breach of the peace, or with abetting the same, or with assembling armed men or taking other unlawful measures with the evident intention of committing the same, is convicted of such offence before a Court of Session, or Magistrate of a Division of a District, or Magistrate of the First Class,

Personal recognizance to keep the peace in cases of conviction.

and the Court or Magistrate by which or by whom such person is convicted, or the Court or Magistrate by which or by whom the final sentence or

order in the case is passed, is of opinion that it is just and necessary to require such person to give a personal recognizance for keeping the peace,

such Court or Magistrate may, in addition to any other order passed in the case, direct that the person so convicted be required to execute a formal engagement, in a sum proportionate to his conditlon in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding one year if the sentence or order be passed by a Magistrate, or three years if the sentence or final order be passed by a Court of Session, with a provision that, if the same be not given, the person required to enter into the engagement shall be kept in simple imprisonment for any time not exceeding one year if the order be passed by a Magistrate, or three years if the order be passed by the High Court or by a Court of Session, unless within such period such person execute such formal engagement as aforesaid.

If the accused person be sentenced to imprisonment, the period for which he may be required to execute a recognizance, and the imprisonment in default of executing such recognizance, shall commence when he is released on the expiration of his sentence.

Where convicting officer is not in charge of Division of District, nor a Magistrate of First Class.

When any accused person is convicted of any offence specified in this section by a Magistrate neither in charge of a Division of a District nor of the First Class, such Magistrate, if he considers it just and necessary to require a personal recognizance for keeping the peace from the person so convicted, shall report the case to the Magistrate of the District, the Magistrate of the Division of the District, or to a Magistrate of the First Class to whom such Magistrate is subordinate; and the Magistrate to whom the case is so reported shall deal with the case as if the conviction had been before himself.

In any case where the order is not made at the time of signing, or by the Court which signs, the judgment, the convict must be produced before the Magistrate who adds the order to enter into a personal recognizance to the original sentence.

Security to keep the peace.

490. Whenever it appears necessary to require security for keeping the peace, in addition to the personal recognizance of the party so convicted, the Court or Magistrate empowered to require a personal recognizance may require security in addition thereto, and may fix the amount of the security-bond to be executed by the surety or sureties; with a provision that, if the same be not given, the party required to find the security shall be kept in simple imprisonment for any time not exceeding one year if the order be passed by the Magistrate of the District, Magistrate of a Division of a District,

or by a First Class Magistrate, or three years if the order be passed by the High Court or by a Court of Session.

491. Whenever a Magistrate of a Division of a District, or a Magistrate of the First Class, receives information that any person is likely to commit a breach of the peace, or to do any act[a] that may probably occasion a breach of the peace, he may summon such person to attend at a time and place mentioned in the summons, to show cause why he should not be required to enter into a bond to keep the peace, with or without sureties, as such Magistrate thinks fit.

Summons to any person to show cause why he should not give bond to keep peace.

EXPLANATION I.—A summons calling on a person to show cause why he should not be bound over to keep the peace, may be issued on any report or other information which appears credible and which the Magistrate believes; but the Magistrate cannot bind over a person until he has adjudicated on evidence before him.

EXPLANATION II.—A Magistrate may recall a summons issued under this section if he thinks proper.

492. Such summons shall set forth the substance of the report or information on which it is issued, the amount of the bond, and the term for which it is to be in force, and, if security is called for, the number of sureties required, and the amount in which they are to be bound respectively, and the time and place at which the person summoned is required to attend.

Form of summons.

EXPLANATION.—When the parties are present in Court no summons is necessary, but the person to whom a summons would have been issued must have an opportunity to show cause why he should not be bound.

493. The bond shall be in the form (E) given in the second schedule, or to the like effect; and its penalty shall be fixed with a due regard to the circumstances of the case and the means of the party.

Penalty of bond.

The amount in which the sureties shall be bound shall not exceed the penalty named in the bond.

494. If the person summoned does not attend at the time and place named in the summons on the day appointed, such Magistrate, if satisfied that the summons has been duly served, may issue a warrant for his arrest:

Warrant of arrest.

Provided that, whenever it appears to such Magistrate, upon the report of a Police officer or upon other credible information (the substance of which report or information shall be recorded[b]), that there is just reason to fear the commission of a breach of the peace, which may probably be prevented by the immediate arrest of any person, the Magistrate may at any time issue a warrant for his arrest.

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[a] This has been held to mean 'any wrongful act', 19 Suth. W. R. Cr. Rulings.
[b] on the warrant: cf. sec. 492.

Magistrate may dispense with personal attendance of person informed against.

495. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of the person informed against under section four hundred and ninety-one, and may permit him to appear and enter into the required security, or show cause against such requisition, by an agent duly authorized to act in his behalf.

Discharge of person informed against.

496. If on the appearance of such person informed against, or of his agent if he is permitted to appear by agent, the Magistrate is not satisfied that there is occasion to bind such person to keep the peace, the Magistrate shall direct his discharge.

Non-compliance with order to give bond.

497. If the Magistrate is satisfied that it is necessary for the preservation of the peace to take a bond from such person with or without security, he shall make an order[a] accordingly; and if such person fails to comply with the order, the Magistrate may order him to be kept in simple imprisonment until he furnish the same.

Time for which person may be bound to keep peace.

498. The period for which the Magistrate may bind a person to keep the peace, with or without security, shall not exceed one year.

Limit of imprisonment under section 497.

When a person is imprisoned under section four hundred and ninety-seven, he shall not be detained by authority of the Magistrate beyond the term of one year, and shall be released whenever, within that term, he complies with the order.

Extension of time for which person may be bound.

499. Whenever it appears to the Magistrate that it is necessary for the preservation of the peace to bind a person beyond the term of one year, he may, before the expiration of the first year, record his opinion to that effect and the grounds thereof, and may refer the case for the orders of the Court of Session.

Such Court, after examining the proceedings of the Magistrate, and making such further inquiry as it thinks necessary, may, if it see cause, authorize the Magistrate to extend the term for a further period not exceeding one year.

If such person fails to give a bond, with security if required, for his keeping the peace for such further period as the Magistrate, under the orders of the Court of Session, directs, he may be kept in simple imprisonment for such further period, or until, within that period, he gives such bond.

EXPLANATION.—When the subject of dispute, or ground for apprehension, is the same as that on which the first order was passed, the Magistrate must proceed under this section if the first bond is still in force, and not under section four hundred and ninety-one.

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[a] See sec. 286, ill. (*c*) *supra* and sec. 500 *infra*.

500. The Magistrate of the District may, if he see sufficient cause, discharge any recognizance and surety for keeping the peace taken by him, or by any Magistrate subordinate to him, or by his predecessor, under the preceding sections, and may order the release of the person confined for default in entering into such recognizance or giving such security. Discharge of recognizances

501. A surety for the peaceable conduct of another person may at any time apply to the Magistrate to be relieved from his engagement as surety. Discharge of sureties.

On such application being made, the Magistrate shall issue his summons or warrant in order that the person for whom such surety is bound may appear or be brought before him.

On the appearance of the person to such warrant, or on his voluntary surrender, the Magistrate shall direct the engagement of the surety to be cancelled, and shall call upon such person to give fresh security, and, in default thereof, shall order him to be kept in simple imprisonment.

502. Whenever it is proved[a] before the Magistrate that any recognizance or other bond taken under this chapter has been forfeited, he shall record the grounds of such proof, and shall call upon the person bound by such recognizance or bond to pay the penalty thereof, or to show cause why it should not be paid. Recovery of penalty from principal.

If sufficient cause be not shown and the penalty be not paid, the Magistrate shall proceed to recover the same by issuing a warrant for the attachment and sale of any of the moveable property belonging to the person bound by such recognizance or bond.

Such warrant may be executed within the jurisdiction of the Magistrate of the District in which it is issued; and it shall authorize the distress and sale of any moveable property belonging to the person bound, without the jurisdiction of the said Magistrate, when endorsed by the Magistrate of the District in which such property is situated.

If such penalty be not paid and cannot be recovered by such attachment and sale, such person shall be liable to imprisonment by order of the Magistrate in the civil jail for a period not exceeding six months.

The penalty shall not be enforced until the person bound has had an opportunity of showing cause, and until the breach of the conditions has been proved.

The commission, or attempt to commit or abetment, of any offence whatever, and wherever it may be committed, is a breach of the bond.

Proceedings under this chapter may be taken, either in the district in which the breach of the peace is apprehended, or where an offence has been

[a] by evidence on oath or affirmation, 11 Bomb 170.

committed in breach of the bond, or in any district where the person it is desired to bind may be.

Recovery of penalty from surety.

503. Whenever it is proved before the Magistrate that any bond with a surety has been forfeited, the Magistrate may at his discretion give notice to the surety to pay the penalty to which he has thereby become liable, or to show cause why it should not be paid.

If no sufficient cause is shown, and such penalty is not paid, the Magistrate may proceed to recover payment of the penalty from such surety in the same manner as from the principal party.

[a]And in case such penalty cannot be so recovered, the surety shall be liable, by order of such Magistrate, to imprisonment in the civil jail for a period not exceeding six months.

CHAPTER XXXVIII.—Of Security for Good Behaviour.

When Magistrate may require security for good behaviour for six months.

504. Whenever it appears to the Magistrate of the District, or to a Magistrate of the First Class, that any person is lurking within his jurisdiction, or that there is within his jurisdiction a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself, such Magistrate may require such security for such person's good behaviour for a period not exceeding six months as to him may appear good and sufficient.[b]

Binding of sentenced person.

If in any case under this or the two following sections, the person to be bound is under sentence for an offence, he must be brought up on or after the expiration of his sentence for the purpose of being bound.

When Sessions Judge or unauthorized Magistrate thinks a person should be bound.

If a Sessions Judge, or Magistrate of the Second or Third Class, considers, from evidence taken in any proceedings before him; that any person should be required to enter into a bond to be of good behaviour, he may send such person in custody to a competent Magistrate.

Powers of Magistrate of Division of District, being a Magistrate of the Second Class, to inquire.

A Magistrate in charge of a Division of a District, exercising the powers of a Magistrate of the Second Class, may make any inquiry necessary under this chapter, and may submit his proceedings to the Magistrate of the District, who may pass such order on them, either directing the person whose character was inquired into to furnish security or not, as he thinks fit.

When Magistrate may require security for good behaviour for one year.

505. Whenever it appears to such Magistrate, from the evidence as to general character adduced before him, that any person is by repute a robber, house-breaker, or thief,

or a receiver of stolen property, knowing the same to have been stolen,

[a] Act No. XI of 1874, section 44.

[b] See secs. 28, proviso, 34, clause (12), 267, 286, illustration (*d*) and 399 *supra*.

or of notoriously bad livelihood, or is a dangerous character,

such Magistrate may require similar security for the good behaviour of such person for a period not exceeding one year.

Procedure where security required for more than one year.

506. Whenever it appears to such Magistrate, from the evidence as to general character adduced before him, that any person is by habit a robber, house-breaker, or thief,

or a receiver of stolen property, knowing the same to have been stolen,

or of a character so desperate and dangerous as to render his release without security, at the expiration of the limited period of one year, hazardous to the community,

he shall record his opinion to that effect, with an order specifying the amount of security which should, in his judgment, be required from such person, as well as the number, character and class of sureties,[a] and the period, not exceeding three years, for which the sureties should be responsible for such person's good behaviour; and if such person does not comply with the order, the Magistrate shall issue a warrant directing his detention pending the orders of the Court of Session.

Proceedings to be laid before Court of Session.

507. If a person required to furnish security under the provisions of the last preceding section does not furnish the same, or offers sureties whom the Magistrate sees fit to reject, the proceedings shall be laid, as soon as conveniently may be, before the Court of Session.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass orders on the case, either confirming, modifying or annulling the orders of such Magistrate, as it thinks proper.

Court of Session may require security for period not exceeding three years.

508. If the Court of Session does not think it safe to direct the immediate discharge of such person, it shall fix a period for his detention, not exceeding three years, in the event of his not giving the security required from him.

Contents of order for security.

509. Whenever security for good behaviour is required by the Court of Session or by a Magistrate, the amount,[b] the security, the number and description of sureties,[c] and the period of time for which the sureties are to be responsible for the good conduct of the person required to furnish security, shall be stated in the order.

The security-bond shall be in the form (G) given in the second schedule, or to the like effect.

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[a] See *British Burma Gazette*, 1873, Part III, p. 3.
[b] 4 Mad. Appendix xlvii
[c] 22 Suth. W. R. Crim. Rulings, 37.

Imprisonment in default of security.

510. In the event of any person required to give security under the provisions of this chapter failing to furnish the security so required, he shall be committed to prison until he furnish the same:[a]

Term of imprisonment.

Provided that no such person shall be kept in prison for a longer period than that for which the security has been required from him.

Imprisonment under this section may be rigorous or simple, as the Court or Magistrate in each case directs.

Release of prisoners under requisition of security.

511. The Magistrate of the District[b] may, at any time, exercise his discretion in releasing, without reference to any other authority, any prisoner confined under requisition of security for good behaviour, whether by his own order, or that of his predecessor in office, or by the order of any officer subordinate to him, provided he is of opinion that such person can be released without hazard to the community.

Report in case of prisoner under requisition of security by order of Court of Session.

512. Whenever the Magistrate of the District is of opinion that any person confined under requisition of security for good behaviour, by order of a Court of Session, can be safely released without such security, such Magistrate shall make an immediate report of the case for the orders of such Court of Session.

Discharge of surety.

513. A surety for the good behaviour of a person may at any time apply to a competent Magistrate[a] to be relieved from his engagement as such surety.

On such application being made, such Magistrate shall issue his summons or warrant in order that such person may appear or be brought before him.

On the appearance of such person pursuant to such summons or warrant, or on his voluntary surrender, such Magistrate shall direct the engagement of the surety to be cancelled, and shall call upon the person so appearing or surrendering to give fresh security, and, in default thereof, shall commit him to custody.

Recovery of penalty from sureties.

514. Whenever a competent Magistrate[c] is of opinion that, by reason of an offence proved to have been committed by a person for whose good behaviour security has been given, subsequent to his having given such security, proceedings should be had upon the bond executed by the surety, such Magistrate shall give notice to the surety to pay the penalty, or to show cause why it should not be paid.

If such penalty be not paid and no sufficient cause for non-payment be shown, such Magistrate shall proceed to recover the penalty from such surety by issuing a warrant for the attachment and sale of any moveable property

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[a] As to escapes, or attempts to escape, from such custody, see the Indian Penal Code, s. 225A.
[b] See sec. 34, clause (13) *supra*.
[c] Apparently, the Magistrate of the District or a Magistrate of the first class.

belonging to him. Such warrant may be executed within the jurisdiction of the Magistrate of the District in which it is issued; and it shall authorize the distress and sale of any moveable property belonging to such surety, without the jurisdiction of the said Magistrate, when endorsed by the Magistrate of the District in which such property is situated.

If such penalty be not paid and cannot be recovered by such attachment and sale, the surety shall be liable to imprisonment by order of such Magistrate in the civil jail for a period not exceeding six months.

515. The provisions of sections four hundred and ninety-two and four hundred and ninety-four, relating to the issue of summons and warrant of arrest for securing the personal attendance of the party informed against, when such party is not in custody, shall apply to proceedings taken under this chapter against persons required to give security for their good behaviour.

Issue of summons and warrant of arrest.

Proceedings may be taken under this chapter, against persons amenable to its provisions, in any district where they may be.

Place where proceedings may be held.

Any evidence taken under chapter XXXVII or this chapter, shall be taken as in cases usually heard by a Magistrate upon summons.[a]

Manner of taking evidence under chapter XXXVII or this chapter.

Any previous conviction against the person to be bound may be proved on proceedings held under this chapter.

Previous convictions may be proved.

516. A Magistrate may refuse to accept any surety offered under this chapter, on the ground that such surety is an unfit person.[b]

Sureties may be rejected on the ground of character.

517. The provisions of this chapter shall not apply to European British subjects.[c]

Chapter not applicable to European British subjects.

CHAPTER XXXIX.—Local Nuisances.

518. A Magistrate of the District, or a Magistrate of a Division of a District, or any Magistrate specially empowered,[d] may, by a written order,[e] direct any person to abstain from a certain act, or to take certain order with certain property[f] in his possession, or under his management, whenever such Magistrate considers that such direction is likely to prevent, or tends to prevent,

Magistrate may issue orders to prevent obstructions, danger to human life, or riots.

a See secs. 333 and 336 *supra*.

b 22 Suth. W. R. Crim. Rulings, 38.

c Sec. 71 *supra*. See Act No. IX of 1874.

d *Bombay Government Gazette*, 1872, p. 1325: *ibid*, 1873, p. 16. See secs. 23, 25, 27, and 34 *supra*.

e As to the power of the Civil Courts to question the legality of such orders, see *Kedarnath* v. *Raghonath*, 6 N. W. P. Rep. (1875), p. 104.

f *i. e.*, immoveable property, 12 W. R. Crim. Rulings, 38, a decision on the corresponding sec. (62) of Act XXV of 1861

obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed,

or danger to human life, health or safety,

or a riot or an affray.

EXPLANATION I.—This section is intended to provide for cases where a speedy remedy is desirable, and where the delay which would be occasioned by a resort to the procedure contained in section five hundred and twenty-one and the next following sections would, in the opinion of the Magistrate, occasion a greater evil than that suffered by the person upon whom the order was made, or would defeat the intention of this chapter.

EXPLANATION II.—An order may, in cases of emergency or in cases where the circumstances do not admit of the serving of notice, be passed *ex parte*, and may in all cases be made upon such information as satisfies the Magistrate.

EXPLANATION III.—An order may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

EXPLANATION IV.—Any Magistrate may recall or alter any order made under this section by himself or by his predecessor in the same office.

Magistrate may prohibit repetition or continuance of public nuisances.

519. A Magistrate of the District, or a Magistrate of a Division of a District, or any Magistrate specially empowered,[a] may enjoin any person[b] not to repeat or continue a public nuisance, as defined in section two hundred and sixty-eight of the Indian Penal Code or under any local or special law.

Orders not judicial proceedings.

520. Orders made under sections five hundred and eighteen and five hundred and nineteen are not judicial proceedings.[c]

Magistrate may order removal of nuisances.

521. Whenever a Magistrate of the District, or a Magistrate of a Division of a District, or, when empowered by the Local Government in this behalf, a Magistrate of the First Class,[d] considers that any unlawful obstruction or nuisance should be removed from any thoroughfare or public place,

or that any trade or occupation, by reason of its being injurious to the health or comfort of the community, should be suppressed or should be removed to a different place,

or that the construction of any building, or the disposal of any combustible substance, as likely to occasion conflagration, should be prevented,

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[a] *Bombay Government Gazette*, 1873, p. 439.

[b] This includes 'any company or association or body of individuals, whether incorporated or not,' Act No. I of 1868, sec. 2, cl. (3).

[c] Sec. 297 *supra* does not, therefore, apply. But see 24 & 25 Vic., c. 104, s. 15.

[d] *Fort St George Gazette*, 1873, p 717: *Bombay Government Gazette*, 1872, p. 1325. *ibid.*, 1873, p. 16. *Panjáb Gazette*, 1873, p. 75.

or that any building is in such a state of weakness that it is likely to fall, and thereby cause injury to persons passing by, and that its removal in consequence is necessary,

or that any tank or well adjacent to any public thoroughfare should be fenced in such a manner as to prevent danger arising to the public—

such Magistrate may issue an order to the person causing such obstruction or nuisance, or carrying on such trade or occupation, or being the owner or in possession of, or having control over, such building, substance, tank or well, as aforesaid, calling on him, within a time to be fixed in the order,

to remove such obstruction or nuisance,

or to suppress or remove such trade or occupation,

or to stop the construction of such building,

or to remove it,

or to alter the disposal of such substance,

or to fence such tank or well, as the case may be,

or to appear before himself or some other Magistrate of the First or Second Class within the time mentioned in the order, and show cause why such order should not be enforced.

Order to be a judicial proceeding.

The issue of an order under this section shall be a judicial proceeding, whether or not evidence is taken therein.[a]

Order to be in the alternative.

Such order may be issued on a report or other information which the Magistrate believes, and shall direct the person to whom it is addressed, either to obey it, or to show cause why it should not be obeyed. The order shall not be made absolute, except as is hereinafter provided, until opportunity has been given to the person affected to show cause.

EXPLANATION.—A "public place" includes property belonging to the State, camping grounds, and grounds left unoccupied for sanitary and recreative purposes.

Service or notification of order.

522. The order mentioned in section five hundred and twenty-one shall, if practicable, be served personally on the person to whom it is issued.

But if personal service is found to be impracticable, such order shall be notified by proclamation, and a written notice thereof shall be stuck up at such place or places as may be best adapted for conveying the information to such person.

Person ordered shall obey, or may claim a jury.

523. The person to whom such order is issued shall be bound, within the time specified in the order, to obey the same, or to appear before the Magistrate before whom he was required by the order to appear and show cause as

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[a] Sec. 297 *sup a*, therefore, applies.

aforesaid; or he may apply to such Magistrate for an order for a jury to be appointed to try whether such order is reasonable and proper.

Constitution of jury.

On receiving such application, such Magistrate shall forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant.

Suspension of order.

The execution of the order shall be suspended pending such inquiry, and the Magistrate who issued the order or before whom the applicant appears shall be guided by the decision of the jury, which shall be according to the opinion of the majority.

When order may be made absolute

If the applicant by neglect or otherwise prevents, or if he does not claim, the appointment of a jury, or if from any cause the jury so appointed do not decide and report within a reasonable time, the Magistrate may pass such order as he thinks proper, which order shall be carried out in the manner hereinafter provided.

Report of jury and order thereon.

The time within which the report is to be made shall be fixed by the Magistrate in the order for the appointment of the jury, and may from time to time be extended by him. When the jury have made their report, the order of the Magistrate must be founded thereon, except in cases falling under section five hundred and twenty-eight.

Attendance of jury.

524. Such Magistrate may summon so many jurors as may be necessary, and such persons shall be bound to attend and make their inquiry and report.

Any juror failing to attend, or neglecting his duty as a juror, shall be liable to be dealt with under section one hundred and seventy-four of the Indian Penal Code.[a]

Procedure in case of disobedience or neglect by person ordered.

525. If the person to whom the order mentioned in section five hundred and twenty-one is issued appears to show cause against the same, as hereinafter provided, the Magistrate shall take evidence in the matter, but if he does not appear, or does not obey the order,

or apply for a jury within the time specified in such order,

he shall be liable to the penalty prescribed in that behalf in section one hundred and eighty-eight of the Indian Penal Code;

and the Magistrate who issued such order may proceed to carry it into execution at the expense of such person, and may realize such expenses, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of such moveable property of such person within

[a] See secs. 467, 470 Expl., and 473 *supra*.

or without his jurisdiction. If such property is without his jurisdiction, the order shall authorize its attachment and sale when endorsed by the Magistrate in whose jurisdiction the goods are attached.[a]

No suit shall lie in respect of anything necessarily or reasonably done in carrying out the provisions of this section.

Procedure where jury finds Magistrate's order to be reasonable.

526. If, in a case referred to a jury, the jury find that the order of the Magistrate is reasonable and proper, as originally made, or subject to a modification which the Magistrate accepts, the Magistrate who issued the order, or before whom cause was shown, shall give notice of such finding to the person to whom the order was issued, and shall add to such notice an order to obey the aforesaid order, within a time to be fixed in the notice, and an intimation that, in case of disobedience, such person will be liable to the penalty provided by section one hundred and eighty-eight of the Indian Penal Code.

If such latter order is not obeyed, the Magistrate may proceed as in section five hundred and twenty-five.

Procedure where person ordered satisfies Magistrate that order is not reasonable.

527. If the person to whom the order of the Magistrate, under section[b] five hundred and twenty-one, is issued, appears and shows cause against it so as to satisfy the Magistrate who issued it that it is not reasonable and proper, no further proceedings shall be taken in the case.

Injunction pending inquiry by jury.

528. If the Magistrate who issued the order considers that immediate measures are necessary to be taken to prevent imminent danger or injury of a serious kind to the public, he may issue such an injunction to the person to whom the order under section five hundred and twenty-one was issued, as is required to obviate or prevent such danger or injury, whether a jury is to be, or has been, appointed or not.

In default of such person forthwith taking all necessary measures ordered to be taken by such injunction, the Magistrate may himself use, or cause to be used, such means as may be necessary to obviate such danger or to prevent such injury.

No suit shall lie in respect of anything necessarily or reasonably done for that purpose.

Saving of certain statutory provisions.

529. Nothing in this chapter shall interfere with the provisions of section forty-eight of Act No. XXIV of 1859 (*for the better regulation of the Police within the territories subject to the Presidency of Fort St. George*), or of section thirty-four of Act No. V of 1861 (*for the regulation of Police*), or of section sixteen of Act No. VIII of 1867 (*for the regulation of the District Police in the Presidency of Bombay*) of the Governor of Bombay in Council.

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[a] Read 'the goods to be attached are found.'
[b] Act No. XI of 1874, section 45.

CHAPTER XL.—POSSESSION.

Magistrate how to proceed if any dispute concerning land, &c., is likely to cause breach of the peace.

530. Whenever the Magistrate of the District, or a Magistrate of a Division of a District, or Magistrate of the First Class, is satisfied that a dispute likely to induce a breach of the peace exists concerning any land or the boundaries of any land, or concerning any houses, water, fisheries, crops or other produce of land, within the limits of his jurisdiction,

such Magistrate shall record a proceeding stating the grounds of his being so satisfied, and shall call on all parties concerned in such dispute to attend his Court, in person or by agent, within a time to be fixed by such Magistrate, and to give in a written statement of their respective claims as respects the fact of actual possession of the subject of dispute.

Party in possession to be continued until ousted by due course of law.

Such Magistrate shall, without reference to the merits of the claims of any party to a right of possession, proceed to inquire and decide which party is in possession of the subject of dispute.

After satisfying himself upon that point, he shall issue an order declaring the party or parties to be entitled to retain possession until ousted by due course of law, and forbidding all disturbance of possession until such time.

EXPLANATION.—Such Magistrate may satisfy himself of the existence of a dispute likely to induce a breach of the peace from a report or other information; but the question of possession must be decided on evidence taken before him.

If previous possession cannot be ascertained, Magistrate may attach subject of dispute.

531. If such Magistrate decides that neither of the parties is in possession, or is unable to satisfy himself as to which person is in possession, of the subject of dispute, he may attach it, until a competent Civil Court shall have determined the rights of the parties, or who ought to be in possession.

Disputes concerning right of use of land or water.

532. If a dispute arise concerning the right of use of any land or water, or any right of way, such Magistrate, within whose jurisdiction the subject of dispute lies, may inquire into the matter; and if it appears to him that the subject of dispute is open to the use of the public, or of any person or of any class of persons, such Magistrate may order that possession thereof shall not be taken or retained by any one to the exclusion of the public, or of such person, or of such class of persons, as the case may be, until the person claiming such possession shall obtain the decision of a competent Civil Court, adjudging him to be entitled to such exclusive possession:

Provided that such Magistrate shall not pass any such order, if the matter be such that the right of use is capable of being exercised at all times of the year, unless such right has been ordinarily exercised within three

months from the date of the institution of the inquiry; or, in cases where the right of use exists at particular seasons, unless such right has been exercised during the last of such seasons before the complaint.

Local inquiry to determine boundary dispute.

533. Whenever a local inquiry is necessary for the purposes of this chapter, any Magistrate of the First Class may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such instructions, consistent with the law for the time being in force, as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

Power to restore possession of immoveable property.

534. Whenever, in any Criminal Court, a person is convicted of an offence attended with criminal force, and it appears to such Court that, by such criminal force, any person has been dispossessed of any immoveable property, the Court may order such person to be restored to possession.

No such order shall prejudice any right over such immoveable property which any person may be able to show in a civil suit.

Saving of powers of Collectors and Revenue Courts.

535. Nothing in this chapter shall affect the powers of a Collector, or a person exercising the powers of a Collector, or of a Revenue Court.

CHAPTER XLI.—Of the Maintenance of Wives and Families.

Order for maintenance of wives and children.

536. If any person, having sufficient means, neglects or refuses to maintain his wife, or legitimate or illegitimate child unable to maintain himself, the Magistrate of the District, or a Magistrate of a Division of a District, or a Magistrate of the First Class, may, upon due proof thereof by evidence, order[a] such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as to such Magistrate seems reasonable.

Such allowance shall be payable from the date of the order.

Enforcement of order.

If such person wilfully neglects to comply with this order, such Magistrate may, for every breach of the order, by warrant, direct the amount due to be levied in the manner provided for levying fines; and may order such person to be imprisoned, with or without hard labour, for any term not exceeding one month, for each month's allowance remaining unpaid:

Proviso.

Provided that, if such person offers to maintain his wife on condition of her living with him, and his wife refuses to live with him, such Magistrate may consider any grounds of refusal stated by such wife; and may make the order allowed by this section notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

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[a] See sec. 286, *ill.* (*f*) and sec. 297 *supra*.

No wife shall be entitled to receive an allowance from her husband under this section, if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by consent.

Alteration in allowance.

537. On the application of any person receiving or ordered to pay a monthly allowance under the provisions of section five hundred and thirty-six, and on proof of a change in the circumstances of such person, his wife,[a] or child, the Magistrate may make such alteration in the allowance ordered as he deems fit, provided the total sum of rupees fifty a month be not exceeded.

Enforcement of order.

538. A copy of the order of maintenance shall be given to the person for whose maintenance it is made, or to the guardian of such person; and shall be enforceable by any Magistrate in any place where the person to whom the order is addressed may be, on the Magistrate being satisfied as to the identity of the parties and the non-payment of the sum claimed.

PART XII.

MISCELLANEOUS PROVISIONS.

CHAPTER XLII.—MISCELLANEOUS.

Procedure in miscellaneous criminal cases and proceedings.

539. The procedure prescribed by this Act shall be followed, so far as it can be, in all miscellaneous criminal cases and proceedings which are instituted in any Court.

Saving of jurisdiction of Presidency Police Magistrates.

540. Nothing in this Act shall be held to alter or affect the jurisdiction or procedure of the Magistrates or Commissioners of Police, or the Police in the Presidency towns, except so far as this Act expressly provides for the same.

Saving of jurisdiction and procedure of landholders, heads of villages, village Police officers, Cantonment Magistrates.

541. Nothing in this Act shall be held to alter or affect—

(*a*) the jurisdiction or procedure of landholders specially empowered according to law in the Presidency of Bombay,[b]

(*b*) the jurisdiction or procedure of the heads of villages in the Presidency of Fort Saint George,[c]

(*c*) the jurisdiction or procedure of village Police officers in the Presidency of Bombay,[d]

(*d*) the jurisdiction or procedure of any officer duly authorized and appointed under the laws in force in the Presidencies of Fort St. George and Bombay respectively, for the trial of petty offences in military bázárs at cantonments and stations occupied by the troops of those Presidencies respectively.[e]

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[a] 10 Beng. Appendix, 34, 35.

[b] The law here referred to is Bom. Reg. XV of 1827, which was repealed by Act No. XVII of 1862.

[c] See Mad. Regs. XI of 1816 and IV of 1821, s. 6.

[d] See Bombay Act No. VIII of 1867, ss. 14, 15, 16.

[e] See Madras Act No. I of 1866, Bom. Act No. III of 1867.

SCHEDULE I.

ENACTMENTS REPEALED.

PART I.—STATUTE.

Year and chapter.	Title.	Extent of repeal.
53 Geo. iii, cap. 155 ...	An Act for continuing in the East India Company, for a further term, the possession of the British territories in India, together with certain exclusive privileges; for establishing further Regulations for the government of the said territories, and the better administration of justice within the same; and for regulating the trade to and from the places within the limits of the said Company's Charter.	Section one hundred and five.

PART II.—ACTS.

Number and year.	Subject or title.	Extent of repeal.
V of 1841	An Act for the greater uniformity of the process upon trials for State offences, and the amendment of such process in certain cases.	The whole.
XV of 1843 ..	An Act for the more extensive employment of Uncovenanted Agency in the Judicial Department.	Sections three, four, five and six.
XV of 1845 ..	An Act for declaring and enacting the privileges of Native Officers and Soldiers of the Armies of the three Presidencies in respect of Judicial and Revenue proceedings.	So much as has not been repealed.
XXIX of 1845 ...	An Act to empower the Government of Bombay to appoint Joint Zillah Judges or Joint Session Judges.	Ditto.
VII of 1853 ...	An Act to extend the jurisdiction of Magistrates, under the 53rd Geo. iii, cap. 155, section 105, in cases of assaults, forcible entries, and other injuries accompanied with force, not being felonies.	The whole Act.

SCHEDULE I.

ENACTMENTS REPEALED.

PART II.—ACTS.—(*concluded*).

Number and year.	Subject or title.	Extent of repeal.
X of 1854	An Act for regulating the powers of Assistants to Magistrates, and of Deputy Magistrates appointed under Act XV of 1843.	So much as has not been repealed.
XX of 1856 ...	An Act to make better provision for the appointment and maintenance of Police Chowkeydars in Cities, Towns, Stations, Suburbs and Bazars in the Presidency of Fort William in Bengal.	Section fifty-eight.
XXV of 1861 ...	An Act for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter.	So much as has not been repealed.
XVII of 1862 ..	An Act to repeal certain Regulations and Acts relating to Criminal Law and Procedure.	Ditto.
VI of 1864... ...	An Act to authorize the punishment of whipping in certain cases.	Sections eight, eleven and twelve.
XXVIII of 1867	An Act to remove doubts as to the legality of certain sentences passed by tribunals, called Petty Sessions Courts, in the North-Western Provinces.	The whole Act.
XXXVI of 1867 ..	An Act to correct an error in Act No. XVII of 1862.	Ditto.
VIII of 1869 ...	An Act further to amend the Code of Criminal Procedure.	Ditto.
XXVII of 1870 ...	To amend the Indian Penal Code..	Sections sixteen and seventeen, and the two schedules.
XIX of 1871 ...	An Act to provide for the appointment of Sessions Judges in Bengal and the North-Western Provinces.	Sections one, two, three, four, five and six.
Bombay Act VII of 1867	An Act for the regulation of the District Police in the Presidency of Bombay.	Section forty.

SCHEDULE I.

ENACTMENTS REPEALED.

PART III.—REGULATIONS.

Number and year.	Title.	Extent of repeal.
	BENGAL REGULATIONS.	
IX of 1793 ..	A Regulation for re-enacting, with Alterations and Modifications, the Regulations passed by the Governor General in Council on the 3rd December 1790, and subsequent Dates, for the Apprehension and Trial of Persons charged with Crimes or Misdemeanors.	Sections three and thirty-four.
IX of 1804 ...	A Regulation for altering the denomination of the Court of Circuit and the Provincial Court of Appeal for the Division of the Ceded Provinces: for the Administration of Justice in Criminal Cases, in the Conquered Provinces in the Doab and on the Right Bank of the River Jumna, and in the Territory ceded to the Honorable the East India Company in Bundelcund by the Peishwa.	So much as has not been repealed.
VI of 1810 ...	A Regulation for defining the penalties to which Zemindars and others shall be subject for neglecting to give due information of robberies, and for harbouring robbers.	Ditto.
XVI of 1810 ...	A Regulation to amend the existing Rules for the Appointment of Zillah and City Magistrates; to provide for the Appointment of Joint and Assistant Magistrates; and to alter the provisions in force for the Payment of a fixed Reward on the Conviction of Public Offenders.	Ditto.
I of 1811 ..	A Regulation for making more adequate Provision for the punishment of persons found guilty of the Offence of breaking into Houses, Tents or Boats; for subjecting to exemplary Punishment Persons receiving or purchasing Plundered or Stolen Property; and for granting licenses to Gold or Silversmiths, Braziers or Coppersmiths, Ironsmiths, Pawnbrokers, retail Vendors of Brass or Copper-wares, and Pykars or itinerant dealers in Second-hand Articles.	Ditto.

SCHEDULE I.

ENACTMENTS REPEALED.

PART III.—REGULATIONS.—(*continued*).

Number and year.	Title.	Extent of repeal.
	BENGAL REGULATIONS.—(*concluded*).	
III of 1812 ...	A Regulation for amending some of the Rules at present in force in regard to the conduct of inquiries into charges of a criminal nature, and for establishing additional provisions with a view to the more effectual apprehension of Criminals.	So much of section four as has not been repealed.
VIII of 1814 ...	A Regulation for extending the Provision contained in Clause Second, Section IV, Regulation III, 1812, to cases of Murder, Arson and Theft.	So much as has not been repealed.
XX of 1817 ...	A Regulation for reducing into one Regulation, with Amendments and Modifications, the several Rules which have been passed for the Guidance of Darogahs and other Subordinate Officers of Police; for modifying the existing Rules concerning the Resistance or Evasion of Criminal Process, and for requiring further aid to the Police in certain cases, from Proprietors and Farmers of Land and their Local Managers, as well as from the Mundals and other Heads of Villages.	Section thirty-three, clauses one and two.
	MADRAS REGULATIONS.	
IX of 1816 ...	A Regulation for reducing into one Regulation certain Rules which have been passed regarding the Office of the Zillah Magistrate, for modifying and defining his Powers, and for transferring the Office of Zillah Magistrate from the Judge to the Collector of the Zillah.	Sections three, four and five.
II of 1827 ...	A Regulation for constituting the Assistant Judges appointed under Regulation I, 1827, Joint Criminal Judges of the Zillahs in which they may be stationed, and for defining the Extent to which the Powers of Magistrate shall be exercised by Subordinate Collectors.	So much as has not been repealed.

SCHEDULE I.

ENACTMENTS REPEALED.

PART III.—REGULATIONS.—(*concluded*)

Number and year.	Title.	Extent of repeal.
	MADRAS REGULATIONS—(*concluded*).	
VIII of 1827	A Regulation for granting to Native Judges Jurisdiction in Criminal Cases.	So much as has not been repealed.
	BOMBAY REGULATIONS.	
XII of 1827	A Regulation for the establishment of a system of Police throughout the Zillahs subordinate to Bombay, for providing Rules for its Administration, and for defining the duties and powers of all Police Authorities and Servants.	Section ten, clause four; so much of section thirteen as has not been repealed, and section thirty-seven, clause three.
XIII of 1827	A Regulation for defining the Constitution of Courts of Criminal Justice, and the functions and Proceedings thereof.	Sections one, two, three, seven, eight, nine, fourteen and fifteen. Sections twenty-seven and twenty-eight.
III of 1830	A Regulation rescinding Regulations VIII and XII of 1828, and vesting the Criminal Judges with the Powers and Functions of Session Judges.	Sections two and six.
IV of 1830	A Regulation rescinding such Parts of Regulation XII of 1827 as vest the Criminal Judge with Police Jurisdiction of the Magistrate and his Assistants.	Section two.
VIII of 1831	A Regulation for modifying the Jurisdiction of Session Judges and Judicial Commissioners.	The whole.

SCHEDULE II.

FORMS OF SUMMONS, WARRANTS, BONDS AND RECOGNIZANCES.

A.

FORM OF SUMMONS (*section* 152).

To *A. B.*, of

Whereas your attendance is necessary to answer to a complaint of (*state shortly the offence complained of*): You are hereby required to appear in person or by authorized agent, as the case may be, before the [Magistrate] of on the day of . Herein fail not.

(*Signature and seal.*)

Dated the day of

B.

FORM OF WARRANT (*section* 159).

To (*name and designation of the person or persons who are to execute the warrant*).

Whereas of is accused of the offence of (*state the offence*): You are hereby directed to apprehend the said and produce him before me.

Herein fail not.

(*Signature and seal.*)

[*This warrant may be endorsed as follows*:—]

If the said shall give bail, himself in the sum of with one surety in the sum of (*or* two sureties each in the sum of,), to appear before me on the day of , he may be released.

(*Signature.*)

Dated

C.

FORM OF WARRANT OF COMMITMENT FOR INTERMEDIATE CUSTODY (*sections* 196, 197 *and* 303).

To , Jailor of

Whereas of is charged with (*state the offence in respect of which the prisoner is charged*), and has been committed to take his trial before the Court of at

You are hereby required to receive the said into your custody and to produce him before the said Court when so required.

(*Signature.*)
(*Office and powers.*)

Dated

D.

FORM OF WARRANT OF COMMITMENT (*section* 303).

To , Jailor of

Whereas of was convicted before me (*name and official designation*) of the offence of (*mention the offence, quoting Act and section*), and was sentenced to (*state the punishment fully and distinctly, mentioning its nature and extent*) : You are hereby required to receive the said into your custody in the said jail of , together with this warrant, and there carry the aforesaid sentence into execution according to law.

(*Signature.*)

Dated the day of

E.

FORM OF BOND TO KEEP THE PEACE (*section* 493).

Whereas I, , inhabitant of , have been called upon to enter into a bond to keep the peace for the term of , I hereby bind himself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term ; and in case of my making default therein, I bind myself to forfeit to Her Majesty [a] the sum of rupees.

(*Signature.*)

Dated

FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF THE PRINCIPAL.

I hereby declare myself surety for the above-said that he shall not commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term ; and in case of his making default

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[a] her heirs and successors.

therein, I hereby bind myself to forfeit to Her Majesty [a] the sum of rupees.

(*Signature.*)

Dated

F.

FORM OF RECOGNIZANCE TO PROSECUTE OR GIVE EVIDENCE (*sections* 130 *and* 360).

I, , of , do hereby bind myself to appear at , in the Court of , at o'clock on the day of next, and then and there to prosecute (*or, as the case may be,* to prosecute and give evidence, *or* to give evidence) in the matter of a charge of against one *A. B.*, and to attend at the said Court from day to day, or as I may be otherwise directed by the presiding officer; and in case of my making default herein, I bind myself to forfeit to Her Majesty [a] the sum of rupees.

(*Signature.*)

Dated

G.

FORM OF BOND FOR GOOD BEHAVIOUR (*section* 509).

Whereas I, inhabitant of , have been called to enter into a bond to be of good behaviour to Her Majesty the Queen and to all her subjects, for the term of , I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term, and in case of my making default therein, I bind myself to forfeit to Her Majesty [a] the sum of rupees.

(*Signature.*)

Dated

FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF THE PRINCIPAL.

I hereby declare myself surety for the above-said that he shall be of good behaviour to Her Majesty and to all her subjects during the said term; and in case of his making default therein, I hereby bind myself to forfeit to Her Majesty [a] the sum of rupees.

(*Signature.*)

Dated

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[a] her heirs and successors.

SCHEDULE III.

CHARGES.

(I.)—Charges with one Head.

(*a*.) I, [*name and office of Magistrate, &c.,*], hereby charge you, [*name of accused person*], as follows:—

(*b*.) That you, on or about the day of , at , waged war against the Queen, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session. On Penal Code, section 121.

(*c*.) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

[*To be substituted for* (*b*).]

(2.) That you, on or about the day of , at , with the intention of inducing the Honourable *A. B.*, Member of the Council of the Governor General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session. On section 124.

(3.) That you, being a public servant in the Department, directly accepted from [*state the name*], for another party [*state the name*], a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session. On section 161.

(4.) That you, on or about the day of , at , committed culpable homicide not amounting to murder, causing the death of , and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session. On section 304.

(5.) That you, on or about the day of , at , abetted the commission of suicide by *A. B.*, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session. On section 306.

On section 325.

(6.) That you, on or about the day of at , voluntarily caused grievous hurt to , and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session.

On section 392.

(7.) That you, on or about the day of , at , committed robbery, an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session.

On section 395.

(8.) That you, on or about the day of , at , committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session.

On section 166.

(9.) That you, on or about the day of , at , did [*or* omitted to do, *as the case may be*] , such conduct being contrary to the provisions of Act section , and was known by you to be prejudicial to , and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session.

On section 193.

(10.) That you, on or about the day of , at , in the course of the trial of before , stated in evidence that " " which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session.

[*In cases tried by Magistrates, substitute* "within my cognizance," *for* "within the cognizance of the Court of Session." *In* (*d*),[a] *omit* "by the said Court."]

(II.)—CHARGES WITH TWO OR MORE HEADS.

(*a*.) I, [*name and office of Magistrate, &c.*], hereby charge you, [*name of accused person*], as follows:—

On Penal Code, sections 241 and 242.

(*b*.) *First.*—That you, on or about the day of , at , knowing a coin to be counterfeit, delivered the same to another person, by name *A. B.*, as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly.—That you, on or about the day of , at , knowing a coin to be counterfeit, attempted to induce another person, by name

[a] Read '(*c*.)'

A. B., to receive it as genuine, and thereby committed an offence punishable under section 242 of the Indian Penal Code, and within the cognizance of the Court of Session.

(*c.*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

For (*b.*) *First.*—That you, on or about the day of , at , committed murder by causing the death of , and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session. On sections 302 and 304.

Secondly.—That you, on or about the day of , at , by causing the death of , committed culpable homicide, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session.

For (*b.*) *First.*—That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session. On sections 379 and 382.

Secondly.—That you, on or about the day of , at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

Thirdly.—That you, on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

Fourthly.—That you, on or about the day of , at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

For (*b.*) That you, on or about the day of , at , in the course of the inquiry into before , stated in evidence that " ," and that you, on or about the day of at in the course of the trial Alternative charges on section 193.

of before stated in evidence that " " one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session.

In trials before Magistrates, substitute "within my cognizance," *for* "within the cognizance of the Court of Session;" *and omit* "by the said Court."

SCHEDULE IV.

EXPLANATORY NOTES.—1*st.*—The entries in the second and sixth columns of the schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

2*nd.*—The term "Whether bailable or not," in column 5, is to be taken in connection with the provisions of sections 388 and 389 of this Code.

3*rd.*—Offences may be tried by a Court superior to the Court specifically mentioned in column 7. For example, a Court of Session may try an offence entered in column 7 as triable by a Magistrate.

4*th.*—The words "Any Magistrate," as used in column 7, shall include any Magistrate of the first, second or third class.

5*th.*—In the territories in British India to which the General Regulations of Bengal, Madras and Bombay do not extend, the powers given by this Act shall be exercised by such officers as the Local Government of those territories respectively shall appoint.

6*th.*—The last part of the schedule, headed "Offences against other Laws," shall not be taken to alter or affect any special provision contained in such laws regarding the procedure to be followed in the case of offences made punishable thereby.

7*th.*—The direction in column 4 is meant to indicate to Magistrates the manner in which the discretion vested in them by sections 148, 149 and 150 is commonly to be used, but it is not to affect the definition of summons cases and warrant cases given in section 4.

CHAPTER V.—OF ABETMENT.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	The same punishment as for the offence abetted.	By the Court by which the offence abetted is triable.

CHAPTER V.—OF ABETMENT—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	The same punishment as for the offence abetted.	By the Court by which the offence abetted is triable.
111	When one act is abetted and a different act is done, subject to the proviso.	Ditto ...	Ditto ...	Ditto ...	The same punishment as for the offence intended to be abetted.	Ditto.
113	When an effect is caused by the act abetted different from that intended by the abettor.	Ditto ...	Ditto ...	Ditto ...	The same punishment as for the offence committed.	Ditto.
114	If abettor is present when offence is committed.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
115	Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto ..	Ditto ...	Not bailable	Imprisonment of either description for 7 years and fine.	Ditto.

	If an act which causes harm be done in consequence of the abetment.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Imprisonment extending to quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the abettor or the person abetted be a public servant, whose duty it is to prevent the offence.	Ditto ...	Ditto ...	Ditto ...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
117	Abetting the commission of an offence by the public, or by more than ten persons.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for 7 years and fine.	Ditto.
	If the offence be not committed ...	Ditto ..	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	Ditto ..	Ditto ...	According as the offence abetted is bailable or not.	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the offence be punishable with death or transportation.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for 10 years.	Ditto.

	If an act which causes harm be done in consequence of the abetment.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Imprisonment extending to quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the abettor or the person abetted be a public servant, whose duty it is to prevent the offence.	Ditto ...	Ditto ...	Ditto ...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
117	Abetting the commission of an offence by the public, or by more than ten persons.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for 7 years and fine.	Ditto.
	If the offence be not committed ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the offence be punishable with death or transportation.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for 10 years.	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE.

121	Waging or attempting to wage war, or abetting the waging of war, against the Queen.	Shall not arrest without warrant.	Warrant ..	Not bailable	Death, or transportation for life, and forfeiture of property.	Court of Session.
121A	Conspiring to commit certain offences against the State.	Ditto ...	Ditto ...	Ditto ...	Transportation for life or any shorter term, or imprisonment of either description for 10 years.	Ditto.
122	Collecting arms, &c., with the intention of waging war against the Queen.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and forfeiture of property.	Ditto.
123	Concealing with intent to facilitate a design to wage war.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
124	Assaulting Governor General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	Ditto ...	Ditto ...	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.
124A	Exciting, or attempting to excite, disaffection.	Ditto ...	Ditto ...	Ditto ...	Transportation for life or for any term and fine, or imprisonment of either description for 3 years and fine, or fine.	Ditto.
125	Waging war against any Asiatic power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto ...	Ditto ...	Ditto ...	Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine.	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
126	Committing depredation on the territories of any power in alliance or at peace with the Queen.	Shall not arrest without warrant.	Warrant ...	Not bailable	Imprisonment of either description for 7 years and fine, and forfeiture of certain property.	Court of Session.
127	Receiving property taken by war or depredation, mentioned in sections 125 and 126.	Ditto ...	Ditto ...	Ditto ..	Ditto	Ditto.
128	Public servant voluntarily allowing prisoner of State or War in his custody to escape.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
129	Public servant negligently suffering prisoner of State or War in his custody to escape.	Ditto ...	Ditto ...	Bailable ...	Simple imprisonment for 3 years and fine.	Court of Session or Magistrate of first class.
130	Aiding escape of, rescuing, or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto ...	Ditto ...	Not bailable	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

131	Abetting mutiny, or attempting to seduce an officer, soldier or sailor from his allegiance or duty.	May arrest without warrant.	Warrant ...	Not bailable	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

132	Abetment of mutiny, if mutiny is committed in consequence thereof.	Ditto ...	Ditto ...	Ditto .	Death or transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
133	Abetment of an assault by an officer, soldier or sailor on his superior officer when in the execution of his office.	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session or Magistrate of the first class.
134	Abetment of such assault, if the assault is committed.	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
135	Abetment of the desertion of an officer, soldier or sailor.	Ditto .	Ditto ..	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first or second class.
136	Harbouring such an officer, soldier or sailor, who has deserted.	Ditto ..	Ditto ...	Ditto ...	Ditto	Ditto.
137	Deserter concealed on board merchant vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons ...	Ditto ...	Fine of 500 rupees ..	Ditto.
138	Abetment of act of insubordination by an officer, soldier or sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
140	Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.	Ditto ...	Summons .	Ditto ..	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

1	2	3	4	5	6	7
Section	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
143	Being member of an unlawful assembly ..	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
144	Joining an unlawful assembly armed with any deadly weapon.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
147	Rioting	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
148	Rioting armed with a deadly weapon ...	Ditto ...	Ditto	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Magistrate of the first class.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	The same as for the offence ...	By the Court by which the offence is triable.

150	Hiring, engaging, or employing persons to take part in an unlawful assembly	May arrest without warrant.	According to the offence committed by the person hired, engaged, or employed.	Ditto ...	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Ditto ...	Summons ...	Bailable ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot, &c.	Ditto ...	Warrant ...	Ditto .	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Magistrate of the first class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto ..	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
	If not committed	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
154	Owner or occupier of land not giving information of riot, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Fine of 1,000 rupees ...	Magistrate of the first or second class.
155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Ditto ...	Ditto ...	Ditto ..	Fine	Ditto.
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto ...	Ditto ..	Ditto ...	Ditto	Ditto.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY—(*concluded*).

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Summons ...	Bailable ..	Imprisonment of either description for 6 months, or fine, or both.	Magistrate of the first or second class.
158	Being hired to take part in an unlawful assembly or riot.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	Or to go armed	Ditto ..	Warrant ..	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
160	Committing affray	Shall not arrest without warrant.	Summons ..	Ditto ...	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Any Magistrate.

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Magistrate of the first class.

162	Taking a gratification in order by corrupt or illegal means to influence a public servant.	Ditto ..	Ditto ..	Ditto ...	Ditto	Ditto.
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto ...	Ditto ...	Ditto ..	Simple imprisonment for 1 year, or fine, or both.	Magistrate of the first class.
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Magistrate of the first class.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Magistrate of the first or second class.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto ...	Ditto .	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Ditto.
167	Public servant framing an incorrect document with intent to cause injury.	Ditto .	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Magistrate of the first class.
168	Public servant unlawfully engaging in trade	Ditto ..	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Magistrate of the first class.
169	Public servant unlawfully buying or bidding for property.	Ditto .	Ditto ..	Ditto ...	Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	Ditto.

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS—*(concluded)*.

1	2	3	4	5	6	7
Section.	Offence	Whether the Police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable
170	Personating a public servant ...	May arrest without warrant.	Warrant ...	Bailable ..	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto ...	Summons ..	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

172	Absconding to avoid service of summons or other proceeding from a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ..	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If summons or notice require attendance in person, &c., in a Court of justice.	Ditto ...	Ditto ..	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Magistrate of the first or second class.

	If summons, &c., require attendance in person, &c., in a Court of justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If the order require personal attendance, &c., in a Court of justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Court in which the offence is committed, subject to the provisions of chapter XXXII of this Code, or if not committed in a Court, a Magistrate of the first or second class.
	If the document is required to be produced in or delivered to a Court of justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Magistrate of the first or second class.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—(*continued*).

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If the notice or information required respects the commission of an offence, &c.	Shall not arrest without warrant.	Summons ...	Bailable.	Simple imprisonment for six months, or fine of 1,000 rupees, or both.	Magistrate of the first or second class.
177	Knowingly furnishing false information to a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If the information required respects the commission of an offence, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
178	Refusing oath when duly required to take oath by a public servant.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Court in which the offence is committed, subject to the provisions of chapter XXXII of this Code, or if not committed in a Court, a Magistrate of the first or second class.

179	Being legally bound to state truth, and refusing to answer questions.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto ..	Ditto ...	Ditto ...	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto.
181	Knowingly stating to a public servant on oath as true that which is false.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Magistrate of the first class.
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto ...	Summons ..	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Magistrate of the first or second class.
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto ...	Ditto .	Ditto ...	Ditto	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto ...	Ditto .	Ditto ...	Imprisonment of either description for 1 month, or fine of 500 rupees or both.	Ditto.
185	Bidding, by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Ditto ..	Ditto .	Ditto ...	Imprisonment of either description for 1 month, or fine of 200 rupees, or both.	Ditto.
186	Obstructing public servant in discharge of his public functions.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Ditto.
187	Omission to assist public servant when bound by law to give such assistance.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c.	Shall not arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	Magistrate of the first or second class.
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction or annoyance or injury to persons lawfully employed.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
	If such disobedience causes danger to human life, health, or safety, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session or Magistrate, first class.
	Giving or fabricating false evidence in any other case.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto ...	Ditto ...	Not bailable	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
	If innocent person be thereby convicted and executed.	Ditto ...	Ditto ...	Ditto ...	Death, or as above ...	Ditto.
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation, or imprisonment for more than seven years.	Ditto ...	Ditto ...	Ditto ...	The same as for the offence ...	Ditto.
196	Using, in a judicial proceeding, evidence known to be false or fabricated.	Ditto ...	Ditto ...	According as the offence of giving such evidence is bailable or not.	The same as for giving or fabricating false evidence.	Court of Session or Magistrate, first class.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto ...	Ditto ...	Bailable ...	The same as for giving false evidence.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
198	Using as a true certificate one known to be false in a material point.	Shall not arrest without warrant.	Warrant ...	Bailable ...	The same as for giving false evidence.	Court of Session or Magistrate, first class.
199	False statement made in any declaration which is by law received as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
200	Using as true any such declaration known to be false.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation, or imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session or Magistrate of the first class.
	If punishable with less than 10 years' imprisonment.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Magistrate of the first class, or by the Court by which the offence is triable.

202	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Magistrate of the first or second class.
203	Giving false information respecting an offence committed.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
204	Secreting or destroying any document to prevent its production as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto	Magistrate of the first class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Magistrate of the first class.
206	Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto ..	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first or second class.
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Ditto ...	Ditto ...	Ditto ...	Ditto	Magistrate of the first class.
209	False claim in a Court of justice ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*continued*).

1	2	3	4	5	6	7
Section.	Offence	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first class.
211	False charge of offence made with intent to injure.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If offence charged be capital, or punishable with transportation for life, or imprisonment for 7 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
212	Harbouring an offender if the offence be capital.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session or Magistrate, first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
	If punishable with imprisonment for 1 year and not for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Magistrate of the first class, or by the Court by which the offence is triable.

213	Taking gift, &c., to screen an offender from punishment, if the offence be capital.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Magistrate of the first class, or by the Court by which the offence is triable.
214	Gift made to cause restoration of property in consideration of screening offender, if the offence be capital.	Ditto ...	Ditto ...	Ditto ..	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Magistrate of the first class, or by the Court by which the offence is triable.
215	Taking gift to help to recover moveable property of which a person has been deprived by an offence, without causing apprehension of offender.	Ditto ...	Ditto ...	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first class.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
	If with imprisonment for 1 year, and not for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Magistrate of the first class, or by the Court by which the offence is triable.
217	Public servant disobeying a direction of law with intent to save persons from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons ...	Ditto ..	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first or second class.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.

219	Public servant in a judicial proceeding making or pronouncing an order, report, verdict, or decision which he knows to be contrary to law.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
	If punishable with transportation for life, or imprisonment for 10 years.	Ditto .	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Court of Session or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ..	Ditto ..	Ditto ...	Imprisonment of either description for 2 years, with or without fine.	Magistrate of the first or second class.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of justice, if under sentence of death.	Ditto ...	Ditto ...	Not bailable	Transportation for life, or imprisonment of either description for 14 years, with or without fine.	Court of Session.
	If under sentence of transportation for life, or imprisonment or penal servitude for 10 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
	If under sentence of imprisonment for less than 10 years.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Magistrate of the first class.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*concluded*).

1	2	3	4	5	6	7
Section	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
223	Escape from confinement negligently suffered by a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for 2 years, or fine, or both.	Magistrate of the first or second class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant ..	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If charged with an offence punishable with transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for 3 years and fine.	Court of Session or Magistrate of the first class.
	If charged with a capital offence ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine.	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude, or imprisonment for 10 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

	If under sentence of death	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
225A	Escape, or attempt to escape, from custody for failing to furnish security for good behaviour.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.
226	Unlawful return from transportation ...	Ditto ...	Ditto ...	Not bailable	Transportation for life, and fine and rigorous imprisonment for 3 years before transportation.	Court of Session.
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons ...	Ditto ...	Punishment of original sentence, or, if part of the punishment has been undergone, the residue.	By the Court by which the original offence was triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Ditto ...	Ditto ...	Bailable ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Court in which the offence is committed, subject to the provisions contained in chapter XXXII of this Code.
229	Personation of a juror or assessor ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
231	Counterfeiting, or performing any part of the process of counterfeiting coin.	May arrest without warrant.	Warrant ...	Not bailable	Imprisonment of either description for 7 years and fine.	Court of Session.
232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
233	Making, buying, or selling instrument for the purpose of counterfeiting coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session or Magistrate of the first class.
234	Making, buying, or selling instrument for the purpose of counterfeiting the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session or Magistrate of the first class.
	If Queen's coin	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
236	Abetting in India the counterfeiting out of British India of coin.	Ditto ...	Ditto ...	Ditto ...	The punishment provided for abetting the counterfeiting of such coin within British India.	Ditto.

237	Import or export of counterfeit coin, knowing the same to be counterfeit.	Ditto ..	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session or Magistrate of the first class.
238	Import or export of counterfeits of the Queen's coin, knowing the same to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
239	Having any counterfeit coin known to be such when it came into possession, and delivering, &c., the same to any person.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session or Magistrate of the first class.
240	The same with respect to the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin counterfeited, or both.	Magistrate of the first or second class.
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session or Magistrate of the first class.
243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
244	Persons employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session.
245	Unlawfully taking from a Mint any coining instrument.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
246	Fraudulently diminishing the weight or altering the composition of any coin.	May arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for 3 years and fine.	Court of Session or Magistrate of the first class.
247	Fraudulently diminishing the weight or altering the composition of the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
250	Delivery to another of coin possessed with the knowledge that it is altered.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.

253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
254	Delivery to another of coin as genuine, which, when first possessed, the deliverer did not know to be altered.	Ditto ..	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin.	Magistrate of the first or second class.
255	Counterfeiting a Government stamp ...	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 10 years and fine.	Court of Session.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
257	Making, buying, or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
258	Sale of counterfeit Government stamp ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
259	Having possession of a counterfeit Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, or Magistrate of the first class.
260	Using as genuine a Government stamp known to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause wrongful loss to Government.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—(*concluded*).

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
262	Using a Government stamp known to have been before used.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first or second class.
263	Erasure of mark denoting that stamp has been used.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Magistrate of the first class.

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the first or second class.
265	Fraudulent use of false weight or measure.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
266	Being in possession of false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
267	Making or selling false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ..	Ditto	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant	Summons ...	Bailable ...	Imprisonment of either description for 6 months, or fine, or both.	Magistrate of the first or second class.
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
271	Knowingly disobeying any quarantine rule	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
272	Adulterating food or drink for man, intended for sale, so as to make the same noxious.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
273	Selling any food or drink as food and drink for man knowing the same to be noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
278	Making atmosphere noxious to health ...	Shall not arrest without warrant.	Ditto ...	Ditto ...	Fine of 500 rupees ...	Ditto.
279	Driving or riding on a public way so rashly or negligently as to endanger human life, &c.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Magistrate of the first or second class.
281	Exhibition of a false light, mark, or buoy.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
282	Conveying for hire any person by water in a vessel in such a state, or so loaded, as to endanger his life.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Magistrate of the first or second class.
283	Causing danger, obstruction, or injury in any public way or line of navigation.	Ditto ...	Ditto ...	Ditto ...	Fine of 200 rupees.	Ditto.

284	Dealing with any poisonous substance so as to endanger human life, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
285	Dealing with fire or any combustible matter so as to endanger human life, &c.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Any Magistrate.
286	So dealing with any explosive substance ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
287	So dealing with any machinery ...	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto	Magistrate of the first or second class.
288	A person omitting to guard against probable danger to human life by the fall of any building, over which he has a right entitling him to pull it down or repair it.	Ditto ..	Ditto ...	Ditto ...	Ditto	Ditto.
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt from such animal.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Any Magistrate.
290	Committing a public nuisance ...	Shall not arrest without warrant.	Ditto ...	Ditto ...	Fine of 200 rupees ...	Ditto.
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine, or both.	Magistrate of the first or second class.
292	Sale, &c., of obscene books, &c.	Ditto ..	Warrant ...	Ditto ...	Imprisonment of either description for 3 months, or fine, or both.	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS—(*concluded*).

1	2	3	4	5	6	7
Section	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
293	Having in possession obscene book, &c., for sale or exhibition.	May arrest without warrant.	Warrant ..	Bailable	Imprisonment of either description for 3 months, or fine, or both.	Magistrate of the first or second class.
294	Obscene songs	Ditto ..	Ditto ...	Ditto ...	Ditto	Ditto.
294A	Keeping a lottery office	Shall not arrest without warrant.	Summons ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
	Publishing proposals relating to lotteries...	Ditto ...	Ditto ..	Ditto ...	Fine of 1,000 rupees .	Ditto.

CHAPTER XV.—OFFENCES RELATING TO RELIGION.

295	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first or second class.
296	Causing a disturbance to an assembly engaged in religious worship.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.

297	Trespassing in a place of worship or sepulture, disturbing funeral with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight, of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.

Offences affecting Life.

302	Murder	May arrest without warrant.	Warrant ...	Not bailable.	Death, transportation for life and fine.	Court of Session.
303	Murder by a person under sentence of transportation for life.	Ditto ...	Ditto ...	Ditto ...	Death	Ditto.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, &c.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
304A	Causing death by rash or negligent act ...	Ditto ...	Ditto	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Court of Session, or Magistrate of the first class.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

Offences affecting Life—concluded.

1 Section	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance	5 Whether bailable or not	6 Punishment under the Indian Penal Code.	7 By what Court triable.
305	Abetment of suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	May arrest without warrant.	Warrant ...	Not bailable.	Death, or transportation for life, or imprisonment for 10 years and fine.	Court of Session.
306	Abetting the commission of suicide ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
307	Attempt to murder	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If such act cause hurt to any person ...	Ditto ...	Ditto ...	Ditto ..	Transportation for life, or as above.	Ditto.
308	Attempt to commit culpable homicide ...	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
	If such act cause hurt to any person ...	Ditto ...	Ditto ...	Ditto ..	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
309	Attempt to commit suicide	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one year and fine.	Magistrate of the first or second class.
311	Being a thug	Ditto ...	Ditto ...	Not bailable.	Transportation for life and fine.	Court of Session.

Of the causing of Miscarriage; of Injuries to unborn Children; of the Exposure of Infants; and of the Concealment of Births.

312	Causing miscarriage	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
	If the woman be quick with child ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
313	Causing miscarriage without woman's consent.	Ditto ...	Ditto ...	Not bailable	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
314	Death caused by an act done with intent to cause miscarriage.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If act done without woman's consent ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
317	Exposure of a child under 12 years of age, by parent or person having care of it, with intention of wholly abandoning it.	May arrest without warrant.	Ditto ...	Bailable ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
318	Concealment of birth by secret disposal of dead body.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, or Magistrate of the first or second class.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

Of Hurt.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
323	Voluntarily causing hurt	*May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Any Magistrate.
324	Voluntarily causing hurt by dangerous weapons or means.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
325	Voluntarily causing grievous hurt ...	Ditto ...	Ditto ...	Ditto ..	Imprisonment of either description for 7 years and fine.	Ditto.
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Ditto ...	Ditto ...	Not bailable	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session, or Magistrate of the first class.
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
328	Administering stupefying drug with intent to cause hurt.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 7 years and fine.	Ditto.
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for 10 years and fine.	Ditto.
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first class.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for 10 years and fine.	Court of Session.
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Ditto	Summons ...	Bailable* ...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both.	Court of Session, or Magistrate of the first or second class.
336	Doing any act which endangers human life or the personal safety of others.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 250 rupees, or both.	Any Magistrate.

* Act No XI of 1874, section 46.

329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 7 years and fine.	Ditto.
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for 10 years and fine.	Ditto.
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first class.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for 10 years and fine.	Court of Session.
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Ditto	Summons ...	Bailable* ...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both.	Court of Session, or Magistrate of the first or second class.
336	Doing any act which endangers human life or the personal safety of others.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 250 rupees, or both.	Any Magistrate.

* Act No XI of 1874, section 46.

CHAPTER—XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

Of Hurt—concluded.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
337	Causing hurt by an act which endangers human life, &c.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 6 months, or fine of 500 rupees, or both.	Magistrate of the first or second class.
338	Causing grievous hurt by an act which endangers human life, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of 1,000 rupees, or both.	Ditto.

Of wrongful Restraint and wrongful Confinement.

341	Wrongfully restraining any person ...	May arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
342	Wrongfully confining any person ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Magistrate of the first or second class.
343	Wrongfully confining for three or more days	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

344	Wrongfully confining for ten or more days.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, or Magistrate of the first or second class.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, in addition to inprisonment under any other section.	Ditto.
346	Wrongful confinement in secret ...	May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Ditto.
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session or Magistrate of the first class.

Of Criminal Force and Assault.

352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first or second class.
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

Of Criminal Force and Assault—concluded.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
355	Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first or second class.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant ...	Not bailable.	Ditto	Any Magistrate.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.

Of Kidnapping, Forcible Abduction, Slavery and forced Labour.

363	Kidnapping	May arrest without warrant.	Warrant ...	Not bailable.	Imprisonment of either description for 7 years and fine.	Court of Session, or Magistrate of the first class.

364	Kidnapping or abducting in order to murder	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
367	Kidnapping or abducting in order to subject a person to grevious hurt, slavery, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
368	Concealing or keeping in confinement a kidnapped person.	Ditto ...	Ditto ...	Ditto ...	Punishment for kidnapping or abduction.	Ditto.
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
370	Buying or disposing of any person as a slave	Shall not arrest without warrant.	Ditto ...	Bailable ...	Ditto	Ditto.
371	Habitual dealing in slaves	May arrest without warrant.	Ditto ...	Not bailable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
372	Selling or letting to hire a minor for the purpose of prostitution.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session, or Magistrate of the first class.
373	Buying or obtaining possession of a minor for the same purpose.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
374	Unlawful compulsory labour	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*concluded*).

Of Rape.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
376	Rape	May arrest without warrant.	Warrant ...	Not bailable...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

Of Unnatural Offences.

377	Unnatural offences	May arrest without warrant.	Warrant ...	Not bailable...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.

Of Theft.

379	Theft	May arrest without warrant.	Warrant ...	Not bailable	Imprisonment of either description for 3 years, or fine, or both.	Any Magistrate.
380	Theft in a building, tent or vessel ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

381	Theft by clerk or servant, of property in possession of master or employer.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, or Magistrate of the first or second class.
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing such theft, or to retiring after committing it, or to retaining property taken by it.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Court of Session.

Of Extortion.

384	Extortion	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for 10 years and fine.	Court of Session.
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*continued*).

Of Extortion—concluded.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If the offence threatened be an unnatural offence.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Transportation for life ...	Court of Session.
389	Putting person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion.	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If the offence be an unnatural offence ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life ...	Ditto.

Of Robbery and Dacoity.

392	Robbery	May arrest without warrant.	Warrant ...	Not bailable.	Rigorous imprisonment for 10 years and fine.	Court of Session, or Magistrate of the first class.
	If committed on the highway between sunset and sunrise.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 14 years and fine.	Ditto.
393	Attempt to commit robbery.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Ditto.

394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person generally concerned in such robbery.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Ditto.
395	Dacoity	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session.
396	Murder in dacoity	Ditto ...	Ditto ...	Ditto ...	Death, transportation for life, or rigorous imprisonment for 10 years and fine.	Ditto.
397	Robbery or dacoity with attempt to cause death or grievous hurt	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for not less than 7 years.	Ditto.
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
399	Making preparation to commit dacoity ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Ditto.
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Ditto.
402	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*continued*).

Of Criminal Misappropriation of Property.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	Punishment under the Indian Penal Code.	7 By what Court triable.
403	Dishonest misappropriation of moveable property, or converting it to one's own use.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, or Magistrate of the first or second class.
	If by clerk or person employed by deceased	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

Of Criminal Breach of Trust.

406	Criminal breach of trust	May arrest without warrant.	Warrant ...	Not bailable	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
407	Criminal breach of trust by a carrier, wharfinger, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, or Magistrate of the first class.

408	Criminal breach of trust by a clerk or servant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, or Magistrate of the first or second class.
409	Criminal breach of trust by public servant, or by banker, merchant or agent, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session, or Magistrate of the first class.

Of the receiving of Stolen Property.

411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant ...	Not bailable	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
413	Habitually dealing in stolen property ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first or second class.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*continued*).

Of Cheating.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
417	Cheating	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of of the first or second class.
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
419	Cheating by personation	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
420	Cheating and thereby dishonestly inducing delivery of property, or the alteration or destruction of a valuable security.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, or Magistrate of the first class.

Of Fraudulent Deeds and Dispositions of Property.

421	Fraudulent removal or concealment of property, &c., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first or second class.

422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
424	Fraudulent removal or concealment of property of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

Of Mischief.

426	Mischief	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 months, or fine, or both.	Any Magistrate.
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first or second class.
428	Mischief by killing, poisoning, maiming or rendering useless, any animal of the value of 10 rupees or upwards.	[a] May arrest without warrant.	Ditto ..	Ditto ...	Ditto	Ditto.
429	Mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, or Magistrate of the first or second class.

[a] Act No. XI of 1874, section 46.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*continued*).

Of Mischief—concluded.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
430	Mischief by causing diminution of supply of water for agricultural purposes, &c.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
431	Mischief by injury to public road, bridge, river, or navigable channel, and rendering it impassable or less safe for travelling, or conveying property.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto
432	Mischief by causing inundation or obstruction to public drainage, attended with damage.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
433	Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
434	Mischief by destroying or moving, &c., a landmark fixed by public authority.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the first or second class.
435	Mischief by fire or explosive substance, with intent to cause damage to amount of 100 rupees or upwards.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.

436	Mischief by fire or explosive substance, with intent to destroy a house, &c.	Ditto ...	Ditto ...	Not bailable	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons' burden.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
438	The mischief described in the last section, when committed by fire or any explosive substance.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
439	Running vessel ashore with intent to commit theft, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
440	Mischief committed after preparation made for causing death or hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.

Of Criminal Trespass.

447	Criminal trespass	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
448	House-trespass	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
449	House-trespass in order to the commission of an offence punishable with death.	Ditto ...	Ditto ...	Not bailable	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*concluded*).

Of Criminal Trespass—concluded.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
451	House-trespass in order to the commission of an offence punishable with imprisonment.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years and fine.	Any Magistrate.
	If the offence is theft	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for 7 years and fine.	Court of Session, or Magistrate of the first or second class.
452	House-trespass, having made preparation for causing hurt, assault, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
453	Lurking house-trespass, or house-breaking	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Magistrate of the first or second class.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, or Magistrate of the first or second class.
	If the offence is theft	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.

455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, or Magistrate of the first class.
456	Lurking house-trespass or house-breaking by night.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, or Magistrate of the first or second class.
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
	If the offence is theft	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, or Magistrate of the first class.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first or second class.
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first or second class.

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
465	Forgery	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session.
466	Forgery of a record of a Court of justice or of a Register of births, &c., kept by a public servant.	Ditto ...	Ditto ...	Not bailable.	Imprisonment of either description for 7 years and fine.	Ditto.
467	Forgery of a valuable security, will, or authority to make or transfer any public security, or to receive any money, &c.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
	When the valuable security is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Ditto.
468	Forgery for the purpose of cheating ...	Shall not arrest without warrant.	Ditto ..	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 3 years and fine.	Ditto.
471	Using as genuine a forged document which is known to be forged.	Ditto ...	Ditto ...	Ditto ...	Punishment for forgery ...	Ditto.

	When the forged document is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Not bailable.	Ditto	Ditto.
472	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under section 467 of the Indian Penal Code; or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto.
473	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If the document is a valuable security or will.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above	Ditto.
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
477	Fraudulently destroying or defacing or attempting to destroy or deface, or secreting a will, &c.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto.

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS—(*concluded*).

Of Trade and Property-Marks.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
482	Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the first or second class.
483	Counterfeiting a trade or property-mark used by another with intent to cause damage or injury.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, or Magistrate of the first class.
485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
486	Knowingly selling goods marked with a counterfeit property or trade-mark.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the first or second class.

487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
488	Making use of any such false mark ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
489	Removing, destroying, or defacing, any property-mark with intent to cause injury.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the first or second class.

CHAPTER XIX.—OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Magistrate of the first or second class.
491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.
492	Being bound by a contract to render personal service for a certain period at a distant place to which the employee is conveyed at the expense of the employer, and there voluntarily deserting the service or refusing to perform the duty.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of double the expense incurred, or both.	Ditto.

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him in that belief.	Shall not arrest without warrant.	Warrant ...	Not bailable	Imprisonment of either descriptions for 10 years and fine.	Court of Session.
494	Marrying again during the life-time of a husband or wife.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 7 years and fine.	Ditto.
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Ditto ...	Ditto ...	Not bailable	Imprisonment of either description for 10 years and fine.	Ditto.
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
497	Adultery	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 5 years, or fine, or both.	Ditto.
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first or second class.

CHAPTER XXI.—OF DEFAMATION.

500	Defamation	Shall not arrest without warrant.	Warrant ...	Bailable ...	Simple imprisonment for 2 years, or fine, or both.	Court of Session, or Magistrate of the first class.
501	Printing or engraving matter knowing it to be defamatory.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XXII.—OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
505	False statement, rumours, &c., circulated with intent to cause mutiny or offences against the public peace.	Ditto ...	Ditto ...	Not bailable.	Imprisonment of either description for 2 years, or fine, or both.	Magistrate of the first or second class.
506	Criminal intimidation	Ditto ...	Ditto ...	Bailable ...	Ditto	Ditto.
	If threat be to cause death or grievous hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session, or Magistrate of the first class.
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, in addition to the punishment under above section.	Ditto.

CHAPTER XXII.—OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE—(*concluded.*)

1 Section	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Magistrate of the first or second class.
509	Uttering any word or making any gesture intended to insult the modesty of a woman.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Magistrate of the first class.
510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	Any Magistrate.

CHAPTER XXIII.—OF ATTEMPTS TO COMMIT OFFENCES.

511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the Police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.	According as the offence contemplated by the offender is bailable or not.	Transportation or imprisonment not exceeding half of the longest term, and of the description, provided for the offence, or fine, or both.	By the Court by which the offence attempted is triable.

OFFENCES AGAINST OTHER LAWS.

If punishable with death, transportation, or imprisonment for seven years or upwards.	May arrest without warrant.	Warrant ...	Not bailable.	... ...	According to the provisions of section eight of this Code.
If punishable with imprisonment for three years and upwards but less than seven.	Ditto ...	Ditto ...	Ditto ...	... ...	
If punishable with imprisonment for less than three years.	Shall not arrest without warrant.	Summons ...	Bailable ...	... ...	
If punishable with fine only	Ditto ...	Ditto ...	Ditto ...	... ...	

SCHEDULE V.

Acts of the Governor General of India in Council.

Acts and sections containing reference.	Section or chapter of the former Code quoted.	Section or chapter of this Code to be substituted.
XVIII of 1864, s. 19 ...	61	307
XXI of 1864, s. 2 ...	62	518
	63	519
	308	521
	309	522
	310	523
	311	525
	312	526
	313	527
	314	528
XXII of 1864, ss. 3 & 5	23	37
XIII of 1865, s. 29 ...	Chap. XIII	Chapter XXXIII.
s. 35 ...	Sections 336 to 340 (both inclusive).	407, 409, 410, 411 and 412.
s. 39 ...	380	287
s. 40 ...	Chap. XXVI	Chapter XXXIV.
s. 41 ...	383	301
XIX of 1865, s. 9 ...	23	37
IV of 1866, s. 30 ...	Sections 336 to 340 (both inclusive).	407, 409, 410, 411 and 412.
s. 33 ...	380	287
s. 34 ...	Chap. XXVI	Chapter XXXIV.
s. 35 ...	385	305
XXIV of 1866, s. 11 ...	Sections 336 to 340 (both inclusive).	407, 409, 410, 411 and 412.
s. 14 ...	380	287
s. 15 ...	Chap. XXVI	Chapter XXXIV.
s. 16 ...	385	305
III of 1867, s. 17 ...	61	307
XV of 1867, s. 19 ...	61	307
XXII of 1867, s. 14 ...	61	307
XXIII of 1867, s. 5 ...	Sections 248 to 255 (both inclusive).	149, Chapter XVII and the provisions applicable to warrant cases.
s. 6 ...	334 and 335	405 and 406
I of 1868, s. 5 ...	61	307
VI of 1868, s. 19 ...	308	521
	and Chap. XX	521 to 529 (both inclusive).
s. 35 ...	61	307
XIII of 1869, s. 2 ...	198	338 and 339
	and 364	334, 335, 337, 338, 339 and 340.
XVIII of 1869, s. 18, cl. (b)	Chap. XXII	Chapter XL.
XXI of 1869, s. 30 ...	Chap. XIX	Chapter XXXVIII.
VIII of 1870, s. 6 ...	61	307
	and 316	536
IX of 1871, sch. II, No. 46	Chap. XXII	Chapter XL.

Acts of the Governor of Madras in Council.

Acts and sections containing reference.	Section or chapter of the former Code quoted.	Section or chapter of this Code to be substituted.
III of 1864, s. 23 ...	Chap. VIII	Chapter XXVII and sections 415 to 420 (both inclusive).
X of 1865, s. 116 ..	Chap. XX	Sections 521 to 529 (both inclusive).
I of 1866, ss. 3 and 5 ...	s. 23	37
I of 1867, s. 1 ..	Chap. I	Chapter I.
VIII of 1867, s. 4 ...	s. 68	142
	s. 97	183
	127	377
	128	378
	129	381
	130	415
	131	416
	132	417
	133	109 & 110
	137	117 (first clause).
	152	124
	153	125
	97	183
s. 9 ...	Chap. IV	Sections 139, 140, 144, 141, 147, 142 and Chapter XII.
	Chap. V	Sections 159, 161, 163, 164, 165, 166, 91, 167, 168, 169, 170, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184 and 185.
	Chap. VI	Sections 92, 94, 95, 96, 97, 98, 99, 100, 93, 101, 108 and 480.
	Chap. VII	Section 92, clause sixth, latter part.
	Chap. VIII	Chapter XXVII and sections 415 to 420 (both inclusive).
	Chap. IX	Sections 109, 110, 111, 114, 116, 117 first part, 89, 112, 102, 103, 379, 380, 118, 119, 120, 121, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133 and 136.
	With the exception of sections	
	125	385
	147	121
	148	Re-enacted in Act No. I of 1872 (Evidence Act).
	149	
	150	
	154	126
	158	130
	160	132
	161	133
	151	123
III of 1871, s. 132 ...	Chap. XX	Sections 521 to 529 (both inclusive).

Acts of the Governor of Bombay in Council.

Acts and sections containing reference.	Section or chapter of the former Code quoted.	Section or chapter of this Code to be substituted.
VI of 1862, s. 18 ...	61	307
III of 1867, ss. 4 and 6	23	37
II of 1868, s. 15 ...	61	307

Acts of the Lieutenant-Governor of Bengal in Council.

Acts and sections containing reference.	Section or chapter of the former Code quoted.	Section or chapter of this Code to be substituted.
II of 1863, s. 7 ...	61	307
VI of 1863, s. 238 ...	61	307
III of 1864, s. 6 ...	23	37
s. 80 ...	61	307
VII of 1864, s. 28 ...	Chap. VIII	Chapter XXVII and sections 415 to 420 (both inclusive).
IV of 1865, s. 4 ...	Chap. XV	Chapter XVI and the provisions applicable to summons cases.
II of 1866, s. 48 ...	s. 61	307
V of 1866, s. 51 ...	s. 61	307
II of 1867, s. 14 ...	s. 61	307
III of 1867, s. 17 ...	s. 61	307
V of 1867, s. 4 ...	s. 61	307
IV of 1871, s. 19 ...	Chap. XV	Chapter XVI and the provisions applicable to summons cases.

ACT No. XI of 1872.

Received the Governor General's assent on the 25th April 1872.

An Act to provide for the trial of offences committed in places beyond British India and for the Extradition of Criminals.[a]

Preamble.

WHEREAS by treaty, capitulation, agreement, grant, usage, sufferance and other lawful means, the Governor General of India in Council has power and jurisdiction within divers places beyond the limits of British India; and

[a] Under Act No. V of 1868, s. 2, the Governor General in Council authorized the Governor of Bombay in Council to delegate to the Commissioner in Sindh all the powers conferred by Act No. XI of 1872 on the Governor of Bombay in Council, and which could be exercised by the said Governor of Bombay in Council as the Local Government in Sindh, see Foreign Department notification No. 29 J, dated 16th December 1872—*Gazette of India*, 21st December 1872, p. 1210. The delegation was effected accordingly—*Bomb. Govt. Gazette*, 1872, p 1202.

whereas such power and jurisdiction have from time to time been delegated to Political Agents and others acting under the authority of the Governor General in Council; and whereas doubts have arisen how far the exercise of such power and jurisdiction, and the delegation thereof, are controlled by and dependent on the laws of British India; and whereas it is expedient to remove such doubts, and to consolidate and amend the law relating to the exercise and delegation of such power and jurisdiction, and to offences committed by British subjects beyond the limits of British India, and to the extradition of criminals; It is enacted as follows:—

1. This Act may be called "The Foreign Jurisdiction and Extradition Act, 1872:" Short title.

It extends to the whole of British India; Extent.

to all Native Indian subjects of Her Majesty without and beyond the Indian territories under the dominion of Her Majesty; and

to all European British subjects within the dominions of Princes and States in India in alliance with Her Majesty.

2. [*Repealed by Act No. XII of* 1873.]

3. In this Act the expression 'Political Agent' means and includes— 'Political Agent' defined.

(1) the principal officer representing the British Indian Government in any territory or place beyond the limits of British India;

(2) any officer in British India appointed[a] by the Governor General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under this Act for any place not forming part of British India:

'Native State' means, 'Native State.'

in reference to Native Indian subjects of Her Majesty, all places without and beyond the Indian territories under the dominion of Her Majesty; and,

in reference to European British subjects, the dominions of Princes and States in India in alliance with Her Majesty.

Powers of British Officers in Places beyond British India.

4. The Governor General in Council may exercise any power or jurisdiction which the Governor General in Council now has, or may at any time here- Exercise of powers of Governor General in places beyond British India, and delegation thereof.

[a] As to British Burma, see Foreign Department notification No. 223, dated 11th October 1872—*Gazette of India*, 12th October 1872, p. 933.

As to the Zoonzaleen District in British Burma, see Foreign Department notification Nos. 68 and 69 C. P., dated 21st November 1872—*Gazette of India*, 30th November 1872, p. 1078.

As to the territories of Chiengmai, Lakon and Lampoonchi, belonging to Siam, see Foreign Department notification No. 5J., dated 9th January 1875—*Gazette of India*, 16th January 1875, p. 39.

after have, within any country or place beyond the limits of British India; and may delegate[a] the same to any servant of the British Indian Government, in such manner and to such extent as to the Governor General in Council from time to time seems fit.

Notification of exercise or delegation of such powers.

5. A notification[b] in the *Gazette of India* of the exercise by the Governor General in Council of any such power or jurisdiction, and of the delegation thereof by him to any person or class of persons, and of the rules of procedure or other conditions to which such persons are to conform, and of the local area within which their powers are to be exercised, shall be conclusive proof in any Court of the truth of the matters stated in the notification.

[a, b] As to Jaipur, Kishengurh and Bhartpur (criminal jurisdiction), see Foreign Department notification No. 2199, dated 11th October 1872—*Gazette of India*, 12th October 1872, p. 935; amended by No. 392G, dated 14th February 1873—*ib.*, 15th February 1873, p. 103; No. 180J, dated 23rd September 1874—*ib.*, 26th September 1874, p. 486; and No. 16J, dated 4th February 1876—*ib.*, 5th February 1876, p. 72.

As to Jaipur, Kishengurh, Bhartpur and Alwar (civil jurisdiction), see Foreign Department notification No. 2418G, dated 21st November 1873—*Gazette of India*, 22nd November 1873, p. 961.

As to Sindh, see Foreign Department notification No. 259J, dated 16th December 1872—*Gazette of India*, 21st December 1872, p. 1210.

As to Alwar, see Foreign Department notification No. 396G, dated 14th February 1873—*Gazette of India*, 15th February 1873, p. 103; amended by No. 180J, dated 23rd September 1874—*ib.*, 26th September 1874, p. 486.

As to Kashmír, see Foreign Department notification No. 605P, dated 28th March 1873—*Gazette of India*, 29th March 1873, p. 257.

As to Central India Agency, see Foreign Department notification No. 159, dated 7th August 1873—*Gazette of India*, 9th August 1873, p. 711; amended by No. 188, dated 18th September 1873—*ib.*, 20th September 1873, p. 841; No. 181J, dated 23rd September 1874—*ib.*, 26th September 1874, p. 486, and No. 6J, dated 20th January 1876—*ib.*, 22nd January 1876, p. 50.

As to the Chambal Bridge and the road from Mau to Dhar, see Foreign Department notification No. 156J, dated 13th August 1874, *Gazette of India*, 15th August 1874, p 427.

As to the territories of Chiengmai, Lakon and Lampoonchi, belonging to Siam, see Foreign Department notification No. 6J, dated 9th January 1875—*Gazette of India*, 14th January 1875, p. 39.

As to Nabha and Pataudi, see Foreign Department notification No. 2015G, dated 1st October 1875—*Gazette of India*, 2nd October 1875, p. 507; superseded by No. 2528G, dated 15th December 1875—*ib.*, 18th December 1875, p. 647.

As to Indore, see Foreign Department notification No. 2134G, dated 15th October 1875—*Gazette of India*, 16th October 1875, p. 536.

As to territories within the Rájputána Agency, see Foreign Department notification No. 109J, dated 2nd July 1875—*Gazette of India*, 3rd July 1875, p. 344.

As to Travancore and Cochin, see Foreign Department notification No. 8J, dated 9th January 1874—*Gazette of India*, 10th January 1874, p. 12.

As to Travancore, see Foreign Department notification No. 119J, dated 9th August 1875—*Gazette of India*, 14th August 1875, p. 404.

As to Cochin, see Foreign Department notification No. 120J, dated 9th August 1875—*Gazette of India*, 14th August 1875, p. 404.

As to the States of Wudwan, Luktar, Bujana and Patrí in Káthiáwár, see Foreign Department notification No. 1J, dated 7th January 1876—*Gazette of India*, 8th January 1876, p. 29.

As to Pahlanpur, see Foreign Department notification No. 217, *Gazette of India*, 12th October 1872, p. 933.

As to Zanzibar, Foreign Department No. 770 P, dated 1st April 1874, *Gazette of India*, 4th April 1874, p. 164.

6. The Governor General in Council may appoint[a] any European British subject, either by name or by virtue of his office, in any such country or place, to be a Justice of the Peace; and every such Justice of the Peace shall have all the powers conferred on Magistrates of the first class, who are Justices of the Peace and European British subjects, by any law for the time being in force in British India relating to Criminal Procedure. The Governor General in Council may direct to what Court having jurisdiction over European British subjects any such Justice of the Peace is to commit for trial.

Appointment, powers and jurisdiction of Justices of the Peace.

7. All Political Agents and all Justices of the Peace heretofore appointed by the Governor General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, in any such country or place as aforesaid, shall be deemed to be and to have been appointed, and to have and to have had jurisdiction, under the provisions of this Act.

Confirmation of existing Political Agents and Justices.

8. The law relating to offences and to Criminal Procedure for the time being in force in British India shall, subject as to procedure to such modifications[b] as the Governor General in Council from time to time directs, extend to all British subjects, European and Native, in Native States.

Extension of criminal law of British India to British subjects in Native States.

Inquiries, in British India, into Crimes committed by British Subjects in Places beyond British India.

9. All British subjects, European and Native, in British India may be dealt with, in respect of offences committed by them in any Native State, as

Liability of British subjects for offences com-

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[a] As to Sindh, Kelat, Gwadur, Persian Gulf, Muscat, Aden and Zanzibar, see Foreign Department notification No. 1275, dated 13th June 1873—*Gazette of India*, 14th June 1873, p. 558.

As to Naugaon, see Foreign Department notification No. 126, dated 24th June 1873—*Gazette of India*, 28th June 1873, p. 596.

As to Káthiáwár, see Foreign Department notification No. 132, dated 27th June 1873—*Gazette of India*, 28th June 1873, p. 596.

As to Travancore and Cochin, see Foreign Department notification, No. 8J, dated 9th January 1874—*Gazette of India*, 10th January 1874, p. 12.

As to the States, Territories and Chiefships mentioned in Home Department No. 1203, dated 23rd September 1874, printed *supra* p. 1622, see Foreign Department notification No. 179J, dated 23rd September 1874—*Gazette of India*, 26th September 1874, p. 486; amended by No. 215J, dated 18th December 1874—*ib.*, 19th December 1874, p. 612.

As to the limits of the jurisdiction of the Sambhar Lake Court, see Foreign Department notification No. 2113P, dated 25th September 1874—*Gazette of India*, 26th September 1874, p. 492.

As to the Nizám's State Railway, see Foreign Department notification No. 1126G, dated 11th June 1875—*Gazette of India*, 12th June 1875, p. 314.

As to Travancore, see Foreign Department notification No. 119J, dated 9th August 1875—*Gazette of India*, 14th August 1875, p. 404.

As to Cochin, see Foreign Department notification No. 120J, dated 9th August 1875—*Gazette of India*, 14th August 1875, p. 404.

[b] As to Travancore, see Foreign Department notification No. 119J, dated 9th August 1875—*Gazette of India*, 14th August 1875, p. 404.

As to Cochin, see Foreign Department notification No. 120J, dated 9th August 1875—*Gazette of India*, 14th August 1875, p. 404.

As to the States of Wudwan, Luktar, Bujana and Patrí in Káthiáwár, see Foreign Department notification No. 1J, dated 7th January 1876—*Gazette of India*, 8th January 1876, p. 29.

mitted in Native States.

if such offences had been committed in any place within British India in which any such subject may be or may be found:

Political Agent to certify fitness of inquiry into charge.

Provided that no charge as to any such offence shall be inquired into in British India, unless the Political Agent, if there be such, for the territory in which the offence is said to have been committed, certifies that, in his opinion, the charge is one which ought to be inquired into in British India:

Provided also that any proceedings taken against any person under this section, which would be a bar to subsequent proceedings against such person for the same offence, if such offence had been committed in British India, shall be a bar against further proceedings against him, under this Act, in respect of the same offence in any Native State.

Power to direct copies of depositions and exhibits to be received in evidence.

10. Whenever any such offence as is referred to in section nine is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in the State in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial, in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

Extradition.

Arrest and removal of persons, other than European British subjects, escaping into British India.

11. When an offence has been committed, or is supposed to have been committed, in any State against the law of such State by a person not being a European British subject, and such person escapes into or is in British India, the Political Agent for such State may issue a warrant for his arrest and delivery at a place in such State, and to a person to be named in the warrant,

if such Political Agent thinks that the offence is one which ought to be inquired into in such State,

and if the act said to have been done would, if done in British India, have constituted an offence[a] against any of the sections of the Indian Penal Code mentioned in the second schedule hereto, or under any other section of the said Code or any other law which may, from time to time, be specified by the Governor General in Council by a notification in the Gazette.

Direction and execution of warrant.

12. Such warrant may be directed to the Magistrate of any district in which the accused person is believed to be; and shall be executed in the manner provided by the law for the time being in force with reference to the

[a] See Foreign Department notification No. 158 J, dated 12th August 1872—*Gazette of India*, 17th August 1872, p 780.

execution of warrants; and the accused person, when arrested, shall be forwarded to the place and delivered to the officer named in the warrant.

13. Such Political Agent may either dispose of the case himself, or may give over the person so forwarded, whether he be a Native Indian subject of Her Majesty or not, to be tried by the ordinary Courts of the State in which the offence was committed, if he is [a]generally or specially directed to do so by the Governor General in Council, or by the Governors in Council of the Presidency of Fort St. George or Bombay respectively.

Political Agent may himself dispose of case, or make over person to ordinary Courts for trial.

14. Whenever a requisition is made to the Governor General in Council or any Local Government, by or by the authority of the persons for the time being administering the executive government of any part of the dominions of Her Majesty, or the territory of any Foreign Prince or State, that any person accused of having committed an offence in such dominions or territory should be given up, the Governor General in Council or such Local Government, as the case may be, may issue an order to any Magistrate who would have had jurisdiction to inquire into the offence if it had been committed within his local jurisdiction, directing him to inquire into the truth of such accusation.

Requisitions for extradition by the executive of any part of British dominions, or Foreign power.

The Magistrate so directed shall issue a summons or warrant for the arrest of such person, according as the offence named appears to be one for which a summons or warrant would ordinarily issue; and shall inquire into the truth of such accusation, and shall report thereon to the Government by which he was directed to hold the said inquiry. If, upon receipt of such report, such Government is of opinion that the accused person ought to be given up to the persons making such requisition, it may issue a warrant for the custody and removal of such accused person and for his delivery at a place and to a person to be named in the warrant.

The provisions of section ten shall apply to inquiries held under this section.

This section shall not affect the provisions of any law or treaty for the time being in force as to the extradition of offenders; but the procedure provided by any such law or treaty shall be followed in every case to which it applies.

15. The Governor General in Council may make, and may from time to time alter, rules[b] to provide for—

Power to make rules.

(1) the confinement, diet and prison discipline of British subjects, European or Native, imprisoned by Political Agents under this Act;

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a, b See Foreign Department notification No. 31J, dated 12th March 1875—*Gazette of India*, 13th March 1875, p. 128; modified by No. 149J, dated 8th October 1875—*ib.*, 9th October 1875, p. 524.

(2) the removal of accused persons under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant, as entitled to receive them ;

(3) and generally to carry out the purposes of this Act.

SCHEDULE I.—[*Repealed by Act No. XII of* 1873.]

SCHEDULE II.[a]

SECTIONS OF THE INDIAN PENAL CODE REFERRED TO IN SECTION 11.

Sections 230 to 623, both inclusive; sections 299 to 304, both inclusive; sections 307, 310 and 311; sections 312 to 317, both inclusive; sections 323 to 333, both inclusive; sections 347 and 348; sections 360 to 373, both inclusive; sections 375 to 377, both inclusive; sections 378 to 414, both inclusive; sections 435 to 440, both inclusive; sections 443 to 446, both inclusive; sections 464 to 468, both inclusive; sections 471 to 477, both inclusive.

ACT No. XIII OF 1872.

Received the Governor General's assent on the 26th April 1872.

An Act to amend Act XV of 1859.

Preamble.

WHEREAS, by Act XV of 1859, provision was made for the grant of certain privileges to the inventors of new manufactures; and whereas it is desirable that provision should be made for the grant of similar privileges to the inventors of new patterns and designs in British India; It is hereby enacted as follows :—

Short title.

1. This Act may be called "The Patterns and Designs Protection Act, 1872 :"

Extent.

It extends to the whole of British India.

Addition to Act XV of 1859, s. 1.

2. At the end of section one of the said Act XV of 1859, the following shall be read :—

'New manufacture' defined.

"For the purposes of this Act, 'New manufacture' shall be deemed to include any new and original pattern or design, or the application of such pattern or design to any substance or article of manufacture."

[a] See Foreign Department Notification No 158J, dated 12th August 1872, *Gazette of India*, 17th August 1872, p 780.

3. At the end of section IV of the said Act, the following shall be read :— Addition to section IV.

"Provided that, in the case of a pattern or design or the application thereof to any substance or article of manufacture, such privilege shall be granted for the term of three years and no more."

4. After section XXXVII of the said Act, the following shall be read :— Addition after section XXXVII.

"XXXVIIA. Whenever, by any law for the time being in force in the United Kingdom, any person is entitled in the United Kingdom to an exclusive right in any pattern or design, or in the application of such pattern or design to any substance or article of manufacture, such person shall be entitled in British India to the sole and exclusive right in such pattern or design, or in such application thereof, and shall be entitled in British India to the same civil remedies in respect of any infringement thereof in British India, as those to which he would be entitled in the United Kingdom in respect of an infringement thereof in the United Kingdom." Persons invested by English law with rights as to patterns and designs, to have same rights in British India.

5. This Act shall be read with and as part of the said Act XV of 1859. Act to be read as part of Act XV of 1859.

ACT No. XIV of 1872.

Received the Governor General's assent on the 6th June 1872.

An Act to exempt the Straits Settlements from the Indian Emigration Act, 1871.

WHEREAS it is expedient to provide for the exemption of the islands and territories known as the Straits Settlements from all or some of the provisions contained in the Indian Emigration Act, 1871; It is hereby enacted as follows :— Preamble.

1. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, exempt emigration to, or contracts for labour to be performed in, the whole or any part of the said Settlements from all or any of the provisions contained in the Indian Emigration Act, 1871; Power to exempt Straits Settlements from Emigration Act.

and may also, from time to time, by like notification, revoke or alter any notification previously made under this Act.

2. No suit or other proceeding shall be maintained against any person for anything done or omitted, in respect of such emigration or contracts, before the date of the notification made under the first clause of section one. Bar of certain proceedings.

THE INDIAN CHRISTIAN MARRIAGE ACT, 1872.

ARRANGEMENT OF SECTIONS.

Preamble.

PRELIMINARY.

SECTIONS.

1. Short title.
   Extent.
2. Enactments repealed.
3. Interpretation-clause.

PART I.

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED.

4. Marriages to be solemnized according to Act.
5. Persons by whom marriages may be solemnized.
6. Grant and revocation of licenses to solemnize marriages.
7. Marriage Registrars.
   Senior Marriage Registrar.
   Magistrate when to be Marriage Registrar.
8. Marriage Registrars in Native States.
9. Licensing of persons to grant certificates of marriage between Native Christians.

PART II.

TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED.

10. Time for solemnizing marriage.
    Exceptions.
11. Place for solemnizing marriage.
    Fee for special license.

PART III.

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT.

12. Notice of intended marriage.
13. Publication of such notice.
    Return or transfer of notice.
14. Notice of intended marriage in private dwelling.
15. Sending copy of notice to Marriage Registrar when one party is a minor.
16. Procedure on receipt of notice.
17. Issue of certificate of notice given and declaration made.
    Proviso.
18. Declaration before issue of certificate.
19. Consent of father, or guardian, or mother.

SECTIONS.

20. Power to prohibit by notice issue of certificate.
21. Procedure on receipt of notice.
22. Issue of certificate in case of minority.
23. Issue of certificates to Native Christians.
24. Form of certificate.
25. Solemnization of marriage.
26. Certificate void if marriage not solemnized within two months.

PART IV.

REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION.

27. Marriages when to be registered.
28. Registration of marriages solemnized by Clergymen of Church of England.
29. Quarterly returns to Archdeaconry.
Contents of returns.
30. Registration and returns of marriages solemnized by Clergymen of Church of Rome.
31. Registration and returns of marriages solemnized by Clergymen of Church of Scotland.
32. Certain marriages to be registered in duplicate.
33. Entries of such marriages to be signed and attested.
34. Certificate to be forwarded to Marriage Registrar, copied and sent to Government.
35. Copies of certificates to be entered and numbered.
36. Registrar to add number of entry to certificate, and send to Government.
37. Registration of marriages between Native Christians under Part I or III.
Custody and disposal of register-book.

PART V.

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR.

38. Notice of intended marriage before Marriage Registrar.
39. Publication of notice.
40. Notice to be filed and copy entered in Marriage Notice Book.
41. Certificate of notice given and oath made.
Proviso.
42. Oath before issue of certificate.
43. Petition to High Court to order certificate in less than fourteen days.
Order on petition.
44. Consent of father or guardian.
Protest against issue of certificate.
Effect of protest.

SECTIONS.
45. Petition where person whose consent is necessary is insane, or unjustly withholds consent.
Procedure on petition.
46. Petition when Marriage Registrar refuses certificate.
Procedure on petition.
47. Petition when Marriage Registrar in Native State refuses certificate.
48. Petition when Registrar doubts authority of person forbidding.
Procedure on petition.
Reference when Marriage Registrar in Native State doubts authority of person forbidding.
Procedure on reference.
49. Liability for frivolous protest against issue of certificate.
50. Form of certificate.
51. Solemnization of marriage after issue of certificate.
52. When marriage not had within two months after notice, new notice required.
53. Marriage Registrar may ask for particulars to be registered.
54. Registration of marriages solemnized under Part V.
55. Certificates to be sent monthly to Secretary to Government.
Custody of register-book.
56. Officers to whom Registrars in Native States shall send certificates.
57. Registrars to ascertain that notice and certificate are understood by Native Christians.
58. Native Christians to be made to understand declarations.
59. Registration of marriages between Native Christians.

PART VI.

MARRIAGE OF NATIVE CHRISTIANS.

60. On what conditions marriages of Native Christians may be certified.
61. Grant of certificate.
62. Register-book to be kept.
63. Searches in register-book and copies of entries.
64. Books in which marriages of Native Christians under Part I or Part III are registered.
65. Part VI not to apply to Roman Catholics.
Saving of certain marriages.

PART VII.

PENALTIES.

66. False oath, notice or certificate for procuring marriage;
67. Forbidding, by false personation, issue of certificate by Marriage Registrar;
68. Solemnizing marriage without due authority;
69. Solemnizing marriage out of proper time, or without witnesses;

SECTIONS.

Saving of marriages solemnized under special license;
70. Solemnizing, without notice or within fourteen days after notice, marriage with minor;
71. Issuing certificate, or marrying, without publication of notice;
Marrying after expiry of certificate;
Solemnizing marriage with minor within fourteen days, without authority of Court, or without sending copy of notice;
Issuing certificate against authorized prohibition;
72. Issuing certificate after expiry of notice, or, in case of minor, within fourteen days after notice, or against authorized prohibition;
73. Persons authorized to solemnize marriage (other than Clergy of Churches of England, Scotland or Rome)—
issuing certificate or marrying without publishing notice,
or after expiry of certificate;
issuing certificate for, or solemnizing, marriage with minor, within fourteen days after notice;
issuing certificate authorizedly forbidden;
solemnizing marriage authorizedly forbidden;
74. Unlicensed person granting certificate pretending to be licensed.
75. Destroying or falsifying register-books.
76. Limitation of prosecutions under Act.

PART VIII.

MISCELLANEOUS.

77. What matters need not be proved in respect of marriage in accordance with Act.
78. Corrections of errors.
79. Searches and copies of entries.
80. Certified copy of entry in marriage register, &c., to be evidence.
81. Sending certificates of certain marriages to Secretary of State for India.
82. Local Government to prescribe fees.
83. Power to make rules.
84. Power to prescribe fees and rules for Native States.
85. Power to declare who shall be District Judge.
86. Power to delegate functions under this Act of Governor General in Council.
87. Saving of Consular marriages.
88. Non-validation of marriages within prohibited degrees.

SCHEDULE I.—NOTICE OF MARRIAGE.
SCHEDULE II.—CERTIFICATE OF RECEIPT OF NOTICE.
SCHEDULE III.—FORM OF REGISTER OF MARRIAGES.
SCHEDULE IV.—MARRIAGE REGISTER-BOOK.
CERTIFICATE OF MARRIAGE.
SCHEDULE V.—ENACTMENTS REPEALED.

ACT No. XV OF 1872.

Received the Governor General's assent on the 18*th July* 1872.

An Act to consolidate and amend the law relating to the solemnization in India of the marriages of Christians.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the solemnization in India of the marriages of persons professing the Christian religion; It is hereby enacted as follows:—

PRELIMINARY.

Short title.

1. This Act may be called "The Indian Christian Marriage Act, 1872:"

Extent.

It extends to the whole of British India, and, so far only as regards Christian subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty.

Enactments repealed.

2. The enactments specified in the fifth schedule hereto annexed are repealed, but not so as to invalidate any marriage confirmed by, or solemnized under, any such enactment.

And all appointments made, licenses granted, consents given, certificates issued, and other things duly done under any such enactment shall be deemed to be respectively made, granted, given, issued and done under this Act.

For clause xxiv of section nineteen of the Court Fees Act, 1870, the following shall be substituted:—

'xxiv. Petitions under the Indian Christian Marriage Act, 1872, sections forty-five and forty-eight.'

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject or context—

"Church of England." "Anglican."

"Church of England" and "Anglican" mean and apply to the Church of England as by law established;

"Church of Scotland."

"Church of Scotland" means the Church of Scotland as by law established;

"Church of Rome." "Roman Catholic."

"Church of Rome" and "Roman Catholic" mean and apply to the Church which regards the Pope of Rome as its spiritual head;

"Church."

"Church" includes any chapel or other building generally used for public Christian worship;

"Minor."

"Minor" means a person who has not completed the age of twenty-one years, and who is not a widower or a widow;

"Native State."

"Native State" means the territories of any Native Prince or State in alliance with Her Majesty;

The expression "Christians" means persons professing the Christian religion; "Christians."

And the expression "Native Christians" includes the Christian descendants of Natives of India converted to Christianity, as well as such converts. "Native Christians."

PART I.

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED.

4. Every marriage between persons, one or both of whom is[a] a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void. Marriages to be solemnized according to Act.

5. Marriages may be solemnized in India— Persons by whom marriages may be solemnized.

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister;

(2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland;

(3) by any Minister of Religion licensed under this Act to solemnize marriages;

(4) by, or in the presence of, a Marriage Registrar appointed under this Act;

(5) by any person licensed under this Act to grant certificates of marriage between Native Christians.

6. The Local Government may grant licenses to Ministers of Religion to solemnize marriages within the territories under its administration, and may revoke such licenses. Grant and revocation of licenses to solemnize marriages.

7. The Local Government may appoint one or more Christians, either by name or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars for any district subject to its administration.[b] Marriage Registrars.

Where there are more Marriage Registrars than one in any district, the Local Government shall appoint one of them to be the Senior Marriage Registrar. Senior Marriage Registrar.

When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or ill, or when his office is temporarily Magistrate when to be Marriage Registrar.

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[a] or are.

[b] See *Bombay Government Gazette*, 21st Nov. 1872, p. 1203; *British Burma Gazette*, 28th June 1873, p. 138.

vacant, the Magistrate of the District shall act as, and be, Marriage Registrar thereof during such absence, illness or temporary vacancy.

Marriage Registrars in Native States.

8. The Governor General in Council may, by notification in the *Gazette of India*, appoint any Christian, either by name or as holding any office for the time being, to be a Marriage Registrar in respect of any district or place within the territories of any Native Prince or State in alliance with Her Majesty.[a]

The Governor General in Council may, by like notification, revoke any such appointment.

Licensing of persons to grant certificates of marriage between Native Christians.

9. The Local Government or (so far as regards any Native State) the Governor General in Council[b] may grant a license to any Christian, either by name or as holding any office for the time being, authorizing him to grant certificates of marriage between Native Christians.

Any such license may be revoked by the authority by which it was granted, and every such grant or revocation shall be notified in the official Gazette.

PART II.

Time and Place at which Marriages may be solemnized.

Time for solemnizing marriage.

10. Every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening:

Exceptions.

Provided that nothing in this section shall apply to—

(1)—a Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, under the hand and seal of the Anglican Bishop of the Diocese or his Commissary, or

(2)—a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized, or from such person as the same Bishop has authorized to grant such license.

Place for solemnizing marriage.

11. No Clergyman of the Church of England shall solemnize a marriage in any place other than a church,

unless there is no church[c] within five miles' distance by the shortest road from such place, or

unless he has received a special license authorizing him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary.

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[a] See *Gazette of India*, 14th June 1873, p. 559: 9th Augt. 1873, p. 712.
[b] See *Gazette of India*, 14th June 1873, p. 559: 9th Augt. 1873, p. 712.
[c] belonging to the Church of England.

For such special license, the Registrar of the Diocese may charge such additional fee as the said Bishop from time to time authorizes. Fee for special license.

PART III.

Marriages solemnized by Ministers of Religion licensed under this Act.

12. Whenever a marriage is intended to be solemnized by a Minister of Religion licensed to solemnize marriages under this Act— Notice of intended marriage.

one of the persons intending marriage shall give notice in writing, according to the form contained in the first schedule hereto annexed, or to the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage, and shall state therein

(a) the name and surname, and the profession or condition, of each of the persons intending marriage,

(b) the dwelling-place of each of them,

(c) the time during which each has dwelt there, and

(d) the church or private dwelling in which the marriage is to be solemnized:

Provided that, if either of such persons has dwelt in the place mentioned in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

13. If the persons intending marriage desire it to be solemnized in a particular church, and if the Minister of Religion to whom such notice has been delivered be entitled to officiate therein, he shall cause the notice to be affixed in some conspicuous part of such church. Publication of such notice.

But if he is not entitled to officiate as a Minister in such church, he shall, at his option, either return the notice to the person who delivered it to him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid. Return or transfer of notice.

14. If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving the notice prescribed in section twelve, shall forward it to the Marriage Registrar of the District, who shall affix the same to some conspicuous place in his own office. Notice of intended marriage in private dwelling.

15. When one of the persons intending marriage is a minor [a] every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of section thirteen, send by the post or otherwise a copy of such notice to the Marriage Registrar of the District, or, if there be more than one Registrar of such district, to the Senior Marriage Registrar. Sending copy of notice to Marriage Registrar when one party is a minor.

[a] See Act No. IX of 1875.

Procedure on receipt of notice.

16. The Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such notice, shall affix it to some conspicuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall likewise publish the same in the manner above directed.

Issue of certificate of notice given and declaration made.

17. Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration hereinafter required, issue under his hand a certificate of such notice having been given and of such declaration having been made:

Proviso.

Provided—

(1) that no such certificate shall be issued until the expiration of four days after the date of the receipt of the notice by such Minister;

(2) that no lawful impediment be shown to his satisfaction why such certificate should not issue; and

(3) that the issue of such certificate has not been forbidden, in manner hereinafter [a] mentioned, by any person authorized in that behalf.

Declaration before issue of certificate.

18. The certificate mentioned in section seventeen shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration—

(a) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage,

and, when either or both of the parties is or are a minor or minors,

(b) that the consent or consents required by law[b] has or have been obtained thereto, or that there is no person resident in India having authority to give such consent, as the case may be.

Consent of father, or guardian, or mother.

19. The father, if living, of any minor, or, if the father be dead, the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor's marriage,

and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India.

Power to prohibit by notice issue of certificate.

20. Every person whose consent to a marriage is required under section nineteen, is hereby authorized to prohibit the issue of the certificate by any Minister, at any time before the issue of the same, by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either of the persons intending marriage, by reason of which he or she is so authorized as aforesaid.

[a] See sec. 20. [b] See sec. 19.

21. If any such notice be received by such Minister, he shall not issue his certificate and shall not solemnize the said marriage until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition, Procedure on receipt of notice.

or until the said notice is withdrawn by the person who gave it.

22. When either of the persons intending marriage is a minor, and the Minister is not satisfied that the consent of the person whose consent to such marriage is required by section nineteen has been obtained, such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage. Issue of certificate in case of minority.

23. When any Native Christian about to be married takes a notice of marriage to a Minister of Religion, or applies for a certificate from such Minister under section seventeen, such Minister shall, before issuing the certificate, ascertain whether such Native Christian is cognizant of the purport and effect of the said notice or certificate, as the case may be, and, if not, shall translate or cause to be translated the notice or certificate to such Native Christian into some language which he understands. Issue of certificates to Native Christians.

24. The certificate to be issued by such Minister shall be in the form contained in the second schedule hereto annexed, or to the like effect. Form of certificate.

25. After the issue of the certificate by the Minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt: Solemnization of marriage.

Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister.

26. Whenever a marriage is not solemnized within two months after the date of the certificate issued by such Minister as aforesaid, such certificate and all proceedings (if any) thereon shall be void, Certificate void if marriage not solemnized within two months.

and no person shall proceed to solemnize the said marriage until new notice has been given and a certificate thereof issued in manner aforesaid.

PART IV.

Registration of Marriages solemnized by Ministers of Religion.

27. All marriages hereafter solemnized in India between persons one or both of whom professes or profess the Christian religion, except marriages solemnized under Part V or Part VI of this Act, shall be registered in manner hereinafter prescribed. Marriages when to be registered.

28. Every Clergyman of the Church of England shall keep a register of marriages and shall register therein, according to the tabular form set forth in Registration of marriages solemnized by

Clergymen of Church of England.

the third schedule hereto annexed, every marriage which he solemnizes under this Act.

Quarterly returns to Archdeaconry.

29. Every Clergyman of the Church of England shall send four times in every year returns in duplicate, authenticated by his signature, of the entries in the register of marriages solemnized at any place where he has any spiritual charge, to the Registrar of the Archdeaconry to which he is subject, or within the limits of which such place is situate.

Contents of returns.

Such quarterly returns shall contain all the entries of marriages contained in the said register from the first day of January to the thirty-first day of March, from the first day of April to the thirtieth day of June, from the first day of July to the thirtieth day of September, and from the first day of October to the thirty-first day of December, of each year, respectively, and shall be sent by such Clergyman within two weeks from the expiration of each of the quarters above specified.

The said Registrar upon receiving the said returns shall send one copy thereof to the Secretary to the Local Government.

Registration and returns of marriages solemnized by Clergymen of Church of Rome.

30. Every marriage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized,

and such person shall forward quarterly to the Secretary to the Local Government returns of the entries of all marriages registered by him during the three months next preceding.

Registration and returns of marriages solemnized by Clergymen of Church of Scotland.

31. Every Clergyman of the Church of Scotland shall keep a register of marriages,

and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act,

and shall forward quarterly to the Secretary to the Local Government, through the Senior Chaplain of the Church of Scotland, returns, similar to those prescribed in section twenty-nine, of all such marriages.

Certain marriages to be registered in duplicate.

32. Every marriage solemnized by any person who has received episcopal ordination, but who is not a Clergyman of the Church of England, or of the Church of Rome, or by any Minister of Religion licensed under this Act to solemnize marriages, shall immediately after the solemnization thereof, be registered in duplicate by the person solemnizing the same; (that is to say) in a marriage-register-book to be kept by him for that purpose, according to the form contained in the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

33. The entry of such marriage in both the certificate and marriage-register-book shall be signed by the person solemnizing the marriage, and also by the persons married, and shall be attested by two credible witnesses, other than the person solemnizing the marriage, present at its solemnization.

Entries of such marriages to be signed and attested.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

34. The person solemnizing the marriage shall forthwith separate the certificate from the marriage-register-book and send it, within one month from the time of the solemnization, to the Marriage Registrar of the District in which the marriage was solemnized, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar,

Certificate to be forwarded to Marriage Registrar, copied, and sent to Government.

who shall cause such certificate to be copied into a book to be kept by him for that purpose,

and shall send all the certificates which he has received during the month, with such number and signature or initials added thereto as are hereinafter required, to the Secretary to the Local Government.

35. Such copies shall be entered in order from the beginning to the end of the said book, and shall bear both the number of the certificate as copied, and also a number to be entered by the Marriage Registrar, indicating the number of the entry of the said copy in the said book, according to the order in which he receives each certificate.

Copies of certificates to be entered and numbered.

36. The Marriage Registrar shall also add such last-mentioned number of the entry of the copy in the book to the certificate, with his signature or initials, and shall, at the end of every month, send the same to the Secretary to the Local Government.

Registrar to add number of entry to certificate, and send to Government.

37. When any marriage between Native Christians is solemnized under Part I or Part III of this Act, the person solemnizing the same shall, instead of proceeding in the manner provided by sections twenty-eight to thirty-six, both inclusive, register the marriage in a separate register-book, and shall keep it safely until it is filled, or, if he leave the district in which he solemnized the marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district.

Registration of marriages between Native Christians under Part I or III.

Custody and disposal of register-book.

Whoever has the control of the book at the time when it is filled, shall send it to the Marriage Registrar of the District, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall send it to the Secretary to the Local Government, to be kept by him with the records of his office.

PART V.

Marriages solemnized by, or in the Presence of, a Marriage Registrar.

Notice of intended marriage before Marriage Registrar.

38. When a marriage is intended to be solemnized by, or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the first schedule hereto annexed, or to the like effect, to any Marriage Registrar of the District within which the parties have dwelt,

or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district,

and shall state therein the name and surname, and the profession or condition, of each of the parties intending marriage, the dwelling place of each of them, the time during which each has dwelt therein, and the place at which the marriage is to be solemnized:

Provided that, if either party has dwelt in the place stated in the notice for more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

Publication of notice.

39. Every Marriage Registrar shall, on receiving any such notice, cause a copy thereof to be affixed in some conspicuous place in his office.

When one of the parties intending marriage is a minor, every Marriage Registrar shall, within twenty-four hours after the receipt by him of the notice of such marriage, send, by post or otherwise, a copy of such notice to each of the other Marriage Registrars (if any) in the same district, who shall likewise affix the copy in some conspicuous place in his own office.

Notice to be filed and copy entered in Marriage Notice Book.

40. The Marriage Registrar shall file all such notices and keep them with the records of his office,

and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the Local Government, and to be called the "Marriage Notice Book";

and the Marriage Notice Book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

Certificate of notice given and oath made.

41. If the party by whom the notice was given requests the Marriage Registrar to issue the certificate next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Registrar shall issue under his hand a certificate of such notice having been given and of such oath having been made:

Proviso.

Provided—

that no lawful impediment be shown to his satisfaction why such certificate should not issue;

that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf by this Act;

that four days after the receipt of the notice have expired, and further,

that where, by such oath, it appears that one of the parties intending marriage is a minor, fourteen days after the entry of such notice have expired.

Oath before issue of certificate.

42. The certificate mentioned in section forty-one shall not be issued by any Marriage Registrar, until one of the parties intending marriage appears personally before such Marriage Registrar, and makes oath [a]

(*a*) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage, and

(*b*) that both the parties have, or (where they have dwelt in the districts of different Marriage Registrars) that the party making such oath has, had their, his or her usual place of abode within the district of such Marriage Registrar,

and, where either or each of the parties is a minor,

(*c*) that the consent or consents to such marriage required by law has or have been obtained thereto, or that there is no person resident in India authorized to give such consent, as the case may be.

Petition to High Court to order certificate in less than fourteen days.

43. When one of the parties intending marriage is a minor, and both such parties are at the time resident in any of the towns of Calcutta, Madras and Bombay, and are desirous of being married in less than fourteen days after the entry of such notice as aforesaid, they may apply by petition to a Judge of the High Court, for an order upon the Marriage Registrar to whom the notice of marriage has been given, directing him to issue his certificate before the expiration of the said fourteen days required by section forty-one.

Order on petition.

And on sufficient cause being shown, the said Judge may, in his discretion, make an order upon such Marriage Registrar, directing him to issue his certificate at any time to be mentioned in the said order before the expiration of the fourteen days so required.

And the said Marriage Registrar, on receipt of the said order, shall issue his certificate in accordance therewith.

Consent of father or guardian.

44. The provisions of section nineteen apply to every marriage under this Part, either of the parties to which is a minor;

Protest against issue of certificate.

and any person whose consent to such marriage would be required thereunder may enter a protest against the issue of the Marriage Registrar's certificate, by writing, at any time before the issue of snch certificate, the word "forbidden" opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and

[a] See Act No. I of 1868, s. 2, clause (17).

place of abode, and his or her position with respect to either of the parties, by reason of which he or she is so authorized.

Effect of protest.

When such protest has been entered, no certificate shall issue until the Marriage Registrar has examined into the matter of the protest, and is satisfied that it ought not to obstruct the issue of the certificate for the said marriage, or until the protest be withdrawn by the person who entered it.

Petition where person whose consent is necessary is insane, or unjustly withholds consent.

45. If any person whose consent is necessary to any marriage under this Part is of unsound mind,

or if any such person (other than the father) without just cause withholds his consent to the marriage,

the parties intending marriage may apply by petition, where the person whose consent is necessary is resident within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if he is not resident within any of the said towns, then to the District Judge:

Procedure on petition.

And the said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way:

And if upon examination such marriage appears proper, such Judge of the High Court or District Judge, as the case may be, shall declare the marriage to be a proper marriage.

Such declaration shall be as effectual as if the person whose consent was needed had consented to the marriage;

and if he has forbidden the issue of the Marriage Registrar's certificate, such certificate shall be issued and the like proceedings may be had under this Part in relation to the marriage as if the issue of such certificate had not been forbidden.

Petition when Marriage Registrar refuses certificate.

46. Whenever a Marriage Registrar refuses to issue a certificate under this Part, either of the parties intending marriage may apply by petition, where the district of such Registrar is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if such district is not within any of the said towns, then to the District Judge:

Procedure on petition.

The said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way, and shall decide thereon:

The decision of such Judge of the High Court or District Judge, as the case may be, shall be final, and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith.

Petition when Marriage Registrar

47. Whenever a Marriage Registrar resident in any Native State refuses to issue his certificate, either of the parties intending marriage may

apply by petition to the Governor General in Council, who shall decide thereon.

in Native State refuses certificate.

Such decision shall be final, and the Marriage Registrar to whom the application was originally made shall proceed in accordance therewith.

Petition when Registrar doubts authority of person forbidding.

48. Whenever a Marriage Registrar, acting under the provisions of section forty-four, is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall apply by petition, where his district is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if such district be not within any of the said towns, then to the District Judge:

Procedure on petition.

The said petition shall state all the circumstances of the case, and pray for the order and direction of the Court concerning the same,

and the said Judge of the High Court or District Judge, as the case may be, shall examine into the allegations of the petition and the circumstances of the case,

and if, upon such examination, it appears that the person forbidding the issue of such certificate is not authorized by law so to do, such Judge of the High Court or District Judge, as the case may be, shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage, as if the issue had not been forbidden.

Reference when Marriage Registrar in Native State doubts authority of person forbidding.

Whenever a Marriage Registrar appointed under section eight to act within any Native State is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall send a statement of all the circumstances of the case, together with all documents relating thereto, to the Governor General in Council.

Procedure on reference.

If it appears to the Governor General in Council that the person forbidding the issue of such certificate is not authorized by law so to do, the Governor General in Council shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage, as if the issue of the certificate had not been forbidden.

Liability for frivolous protest against issue of certificate.

49. Every person entering a protest with the Marriage Registrar, under this Part, against the issue of any certificate, on grounds which such Marriage Registrar, under section forty-four, or a Judge of the High Court or the District Judge, under section forty-five or forty-six, declares to be frivolous and such as ought not to obstruct the issue of the certificate, shall be liable for

the costs of all proceedings in relation thereto and for damages, to be recovered by suit by the person against whose marriage such protest was entered.

Form of certificate.

50. The certificate to be issued by the Marriage Registrar under the provisions of section forty-one shall be in the form contained in the second schedule to this Act annexed or to the like effect,

and the Local Government shall furnish to every Marriage Registrar a sufficient number of forms of certificate.

Solemnization of marriage after issue of certificate.

51. After the issue of the certificate of the Marriage Registrar,

or, where notice is required to be given under this Act to the Marriage Registrars for different districts, after the issue of the certificates of the Marriage Registrars for such districts,

marriage may, if there be no lawful impediment to the marriage of the parties described in such certificate or certificates, be solemnized between them, according to such form and ceremony as they think fit to adopt.

But every such marriage shall be solemnized in the presence of some Marriage Registrar (to whom shall be delivered such certificate or certificates as aforesaid), and of two or more credible witnesses besides the Marriage Registrar.

And in some part of the ceremony each of the parties shall declare as follows, or to the like effect—

"I do solemnly declare that I know not of any lawful impediment why I, *A. B.*, may not be joined in matrimony to *C. D.*"

And each of the parties shall say to the other as follows, or to the like effect—" I call upon these persons here present to witness that I, *A. B.*, do take thee, *C. D.*, to be my lawful wedded wife [*or* husband]."

When marriage not had within two months after notice, new notice required.

52. Whenever a marriage is not solemnized within two months after the copy of the notice has been entered by the Marriage Registrar, as required by section forty, the notice and the certificate, if any, issued thereupon, and all other proceedings thereupon, shall be void;

and no person shall proceed to solemnize the marriage, nor shall any Marriage Registrar enter the same, until new notice has been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

Marriage Registrar may ask for particulars to be registered.

53. A Marriage Registrar before whom any marriage is solemnized under this Part may ask of the persons to be married the several particulars required to be registered touching such marriage.

Registration of marriages solemnized under Part V.

54. After the solemnization of any marriage under this Part, the Marriage Registrar present at such solemnization shall forthwith register the marriage in duplicate; that is to say, in a marriage-register-book, according

to the form of the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

The entry of such marriage in both the certificate and the marriage-register-book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the Marriage Registrar present at such marriage, whether or not it is solemnized by him, and also by the parties married, and attested by two credible witnesses other than the Marriage Registrar and person solemnizing the marriage.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

Certificates to be sent monthly to Secretary to Government.

55. The Marriage Registrar shall forthwith separate the certificate from the marriage-register-book and send it, at the end of every month, to the Secretary to the Local Government.

Custody of register-book.

The Marriage Registrar shall keep safely the said register-book until it is filled, and shall then send it to the Secretary to the Local Government, to be kept by him with the records of his office.

Officers to whom Registrars in Native States shall send certificates.

56. The Marriage Registrars in Native States shall send the certificates mentioned in section fifty-four to such officers as the Governor General in Council from time to time, by notification in the *Gazette of India*, appoints in this behalf.[a]

Registrars to ascertain that notice and certificate are understood by Native Christians.

57. When any Native Christian about to be married gives a notice of marriage, or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall ascertain whether the said Native Christian understands the English language, and, if he does not, the Marriage Registrar shall translate, or cause to be translated, such notice or certificate, or both of them, as the case may be, to such Native Christian into a language which he understands;

or the Marriage Registrar shall otherwise ascertain whether the Native Christian is cognizant of the purport and effect of the said notice and certificate.

Native Christians to be made to understand declarations.

58. When any Native Christian is married under the provisions of this Part, the person solemnizing the marriage shall ascertain whether such Native Christian understands the English language, and, if he does not, the person solemnizing the marriage shall, at the time of the solemnization, translate, or cause to be translated, to such Native Christian, into a language which he understands, the declarations made at such marriage in accordance with the provisions of this Act.

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[a] As to the Central India Agency, see *Gazette of India*, 14th June 1873, p. 560. as to the Rájputána Agency, *ibid.*, 9 Aug. 1873, p. 712.

Registration of marriages between Native Christians.

59. The registration of marriages between Native Christians under this Part shall be made in conformity with the rules laid down in section thirty-seven (so far as they are applicable), and not otherwise.

PART VI.

Marriage of Native Christians.

On what conditions marriages of Native Christians may be certified.

60. Every marriage between Native Christians applying for a certificate, shall, without the preliminary notice required under Part III, be certified under this Part, if the following conditions be fulfilled, and not otherwise:—

(1.) The age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years:

(2.) Neither of the persons intending to be married shall have a wife or husband still living:

(3.) In the presence of a person licensed under section nine, and of at least two credible witnesses other than such person, each of the parties shall say to the other—

"I call upon these persons here present to witness that I, *A. B.*, in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, *C. D.*, to be my lawful wedded wife [*or* husband]" or words to the like effect:

Provided that no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year, unless such consent as is mentioned in section nineteen has been given to the intended marriage, or unless it appears that there is no person living authorized to give such consent.

Grant of certificate.

61. When, in respect to any marriage solemnized under this Part, the conditions prescribed in section sixty have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration has been made, shall, on the application of either of the parties to such marriage, and, on the payment of a fee of four annas, grant a certificate of the marriage.

The certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed.

Register-book to be kept.

62. A register-book of all marriages of which certificates are granted under section sixty-one, shall be kept by the person granting such certificates, in his own vernacular language.

Such register-book shall be kept according to such form as the Local Government from time to time prescribes in this behalf, and true extracts

therefrom, duly authenticated, shall be deposited at such places as the Local Government directs.[a]

63. Every person licensed under this Act to grant certificates of marriage, and keeping a marriage-register-book under section sixty-two, shall, at all reasonable times, allow search to be made in such book, and shall, on payment of the proper fee, give a copy, certified under his hand, of any entry therein.

Searches in register-book and copies of entries.

64. The provisions of sections sixty-two and sixty-three, as to the form of the register-book, depositing extracts therefrom, allowing searches thereof, and giving copies of the entries therein, shall, *mutatis mutandis*, apply to the books kept under section thirty-seven.

Books in which marriages of Native Christians under Part I or III are registered.

65. This Part of this Act, except so much of sections sixty-two and sixty-three as are referred to in section sixty-four, shall not apply to marriages between Roman Catholics. But nothing herein contained shall invalidate any marriage celebrated between Roman Catholics under the provisions of Part V of Act No. XXV of 1864, previous to the twenty-third day of February 1865.

Part VI not to apply to Roman Catholics. Saving of certain marriages.

PART VII.

PENALTIES.

66. Whoever, for the purpose of procuring any marriage, intentionally makes any false oath or signs any false notice or certificate required by this Act, shall be deemed guilty of the offence[b] described in section one hundred and ninety-three of the Indian Penal Code.

False oath, notice or certificate for procuring marriage;

67. Whoever forbids the issue, by a Marriage Registrar, of a certificate, by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such representation to be false, or not having reason to believe it to be true, shall be deemed guilty of the offence described in section two hundred and five of the Indian Penal Code.

Forbidding, by false personation, issue of certificate by Marriage Registrar;

68. Whoever, not being authorized under this Act to solemnize a marriage in the absence of a Marriage Registrar of the District in which such marriage is solemnized, knowingly solemnizes a marriage between persons one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years, and not exceeding ten years,

Solemnizing marriage without due authority;

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[a] See *N. W. Provinces Gazette*, 1872, p. 1088: *Panjáb Gazette*, 1873, p. 745: *Oudh Gazette*, 30th August 1873, p. 33. As to Native States in alliance with Her Majesty and not within the Presidencies of Fort St. George and Bombay, see *Gazette of India*, 18th October 1873, p. 902.

[b] the second offence.

or, if the offender be an European or American, with penal servitude according to the provisions of Act No. XXIV of 1855 *(to substitute penal servitude for the punishment of transportation in respect of European and American convicts, and to amend the law relating to the removal of such convicts),* and shall also be liable to fine.

Solemnizing marriage out of proper time, or without witnesses;

69. Whoever knowingly and wilfully solemnizes a marriage between persons, one or both of whom is or are a Christian or Christians, at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses other than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Saving of marriages solemnized under special license;

This section does not apply to marriages solemnized under special licenses granted by the Anglican Bishop of the Diocese or by his Commissary, nor to marriages performed between the hours of seven in the evening and six in the morning by a Clergyman of the Church of Rome, when he has received the general or special license in that behalf mentioned in section ten.

Solemnizing, without notice or within fourteen days after notice, marriage with minor;

70. Any Minister of Religion licensed to solemnize marriages under this Act, who, without a notice in writing, or, when one of the parties to the marriage is a minor and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Issuing certificate, or marrying, without publication of notice;

71. A Marriage Registrar under this Act, who commits any of the following offences:—

(1) knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage, without publishing the notice of such marriage as directed by this Act;

marrying after expiry of certificate;

(2) after the expiration of two months from the issue by him of a certificate in respect of any marriage, solemnizes such marriage;

solemnizing marriage with minor within fourteen days, without authority of Court, or without sending copy of notice;

(3) solemnizes, without an order of a competent Court authorizing him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the District if there be more Marriage Registrars of the District than one, and if he himself be not the Senior Marriage Registrar;

issuing certificate against authorized prohibition;

(4) issues any certificate the issue of which has been prohibited, as in this Act provided, by any person authorized to prohibit the issue thereof,

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

72. Any Marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of three months after the notice has been entered by him as aforesaid,

Issuing certificate after expiry of notice, or, in case of minor, within fourteen days after notice, or against authorized prohibition

or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a minor, before the expiration of fourteen days after the entry of such notice, or any certificate the issue of which has been forbidden as aforesaid by any person authorized in this behalf,

shall be deemed to have committed an offence under section one hundred and sixty-six of the Indian Penal Code.

73. Whoever, being authorized under this Act to solemnize a marriage,

Persons authorized to solemnize marriage (other than Clergy of Churches of England, Scotland or Rome)

and not being a Clergyman of the Church of England solemnizing a marriage after due publication of banns, or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf,

or, not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, rites, ceremonies and customs of that church,

or, not being a clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies and customs of that church,

knowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid, without publishing, or causing to be affixed, the notice of such marriage as directed in Part III of this Act, or after the expiration of two months after the certificate has been issued by him ;

issuing certificate, or marrying, without publishing notice, or after expiry of certificate ;

or knowingly and wilfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the District ;

issuing certificate for, or solemnizing, marriage with minor, within fourteen days after notice ;

or knowingly and wilfully issues any certificate the issue of which has been forbidden, under this Act, by any person authorized to forbid the issue ;

issuing certificate authorizedly forbidden ;

or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same,

solemnizing marriage authorizedly forbidden.

shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine.

Unlicensed person granting certificate pretending to be licensed.

74. Whoever, not being licensed to grant a certificate of marriage under Part VI of this Act, grants such certificate intending thereby to make it appear that he is so licensed, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

Destroying or falsifying register-books.

75. Whoever, by himself or another, wilfully destroys or injures any register-book or the counterfoil certificates thereof, or any part thereof, or any authenticated extract therefrom,

or falsely makes or counterfeits any part of such register-book or counterfoil certificates,

or wilfully inserts any false entry in any such register-book or counterfoil certificate or authenticated extract,

shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Limitation of prosecutions under Act.

76. The prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed.

PART VIII.

Miscellaneous.

What matters need not be proved in respect of marriage in accordance with Act.

77. Whenever any marriage has been solemnized in accordance with the provisions of sections four and five, it shall not be void merely on account of any irregularity in respect of any of the following matters, namely :—

(1.)—Any statement made in regard to the dwelling of the persons married, or to the consent of any person whose consent to such marriage is required by law :

(2.)—The notice of the marriage :

(3.)—The certificate or translation thereof :

(4.)—The time and place at which the marriage has been solemnized :

(5.)—The registration of the marriage.

Corrections of errors.

78. Every person charged with the duty of registering any marriage, who discovers any error in the form or substance of any such entry, may within one month next after the discovery of such error, in the presence of the persons married, or, in case of their death or absence, in the presence of two other credible witnesses, correct the error by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry, and add thereto the date of such correction, and such person shall make the like marginal entry in the certificate thereof.

And every entry made under this section shall be attested by the witnesses in whose presence it was made.

And, in case such certificate has been already sent to the Secretary to the Local Government, such person shall make and send in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made.

Searches and copies of entries.

79. Every person solemnizing a marriage under this Act, and hereby required to register the same,

and every Marriage Registrar or Secretary to a Local Government having the custody for the time being of any register of marriages, or of any certificate, or duplicate, or copies of certificate under this Act,

shall, on payment of the proper fees, at all reasonable times, allow searches to be made in such register, or for such certificate, or duplicate or copies, and give a copy under his hand of any entry in the same.

Certified copy of entry in marriage-register, &c., to be evidence.

80. Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage-register or certificate, or duplicate, required to be kept or delivered under this Act, of any entry of a marriage in such register or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such register or certificate, or duplicate, or of any entry therein, respectively, or of such copy.

Sending certificates of certain marriages to Secretary of State for India.

81. The Secretary to the Local Government and the officers appointed under section fifty-six shall, at the end of every quarter in each year, select from the certificates of marriages forwarded to them respectively during such quarter, the certificates of the marriages of which the Governor General in Council may desire that evidence shall be transmitted to England,

and shall send the same certificates, signed by them respectively, to the Secretary to the Government of India in the Home Department, for the purpose of being forwarded to the Secretary of State for India and delivered to the Registrar General of Births, Deaths and Marriages:

Provided that, in the case of the Governments of Madras and Bombay, the said certificates shall be forwarded by such Governments respectively directly to the Secretary of State for India.

Local Government to prescribe fees.

82. Fees shall be chargeable under this Act for—

receiving and publishing notices of marriages;

issuing certificates of marriage by Marriage Registrars, and registering marriages by the same;

entering protests against, or prohibitions of, the issue of marriage certificates by the said Registrars;

searching register-books or certificates, or duplicates, or copies thereof;

giving copies of entries in the same under sections sixty-three and seventy-nine.

The Local Government shall fix the amount of such fees respectively,[a]

and may from time to time vary or remit them either generally or in special cases, as to it may seem fit.

Power to make rules.

83. The Local Government may make rules in regard to the disposal of the fees mentioned in section eighty-two, the supply of register-books, and the preparation and submission of returns of marriages solemnized under this Act.[b]

Power to prescribe fees and rules for Native States.

84. The powers conferred on the Local Government by sections eighty-two and eighty-three may, so far as regards Native States, be exercised by the Governor General in Council.[c]

Power to declare who shall be District Judge.

85. The Local Government may, by notification in the official Gazette, declare who shall, in any place to which this Act applies, be deemed to be the District Judge.[d]

Power to delegate functions under this Act of Governor General in Council.

86. The powers and functions given by this Act to the Governor General in Council may be delegated to and exercised by such officers as the Governor General in Council from time to time appoints in this behalf.[e]

And all such powers and functions may be exercised, as regards Native States situate within the local limits of the Presidencies of Fort Saint George and Bombay, by the Governors in Council of those Presidencies respectively.[f]

Saving of Consular marriages.

87. Nothing in this Act applies to any marriage performed by any Minister, Consul, or Consular Agent between subjects of the State which he represents and according to the laws of such State.

Non-validation of marriages within prohibited degrees.

88. Nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into.

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[a] *Bombay Government Gazette*, 1873, p. 337: *N. W. Provinces Gazette*, 1872, p. 1088: *Panjáb Gazette*, 1873, p. 74: *British Burma Gazette*, 1875, Part II, p. 133.

[b] *Fort St. George Gazette*, 1874, pp. 501, 613.

[c] *Gazette of India*, 18th October 1873, p. 902.

[d] *Bombay Government Gazette*, 10th April 1873, p. 337: *N. W. Provinces Gazette*, 21st September 1872, p 1088: *Panjáb Gazette*, 1873, p. 74.

[e] *Gazette of India*, 9th August 1873, p. 712: *ibid.*, 14th June 1876, p. 560.

[f] *Bombay Government Gazette*, 1874, p. 996.

SCHEDULE I.

(See sections 12 *and* 38*)*:

NOTICE OF MARRIAGE.

To a Minister [*or* Registrar] of

I hereby give you notice that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described, (that is to say) :—

Names.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.	Church, chapel or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in different districts.
James Smith.	*Widower.*	*Carpenter.*	*Of full age.*	*16, Clive Street.*	*23 days.*	*Free Church of Scotland Church, Calcutta.*	
Martha Green.	*Spinster.*	.....	*Minor.*	*20, Hastings' Street.*	*More than a month.*		

Witness my hand, this day of *seventy-two.*

(*Signed*) *JAMES SMITH.*

[The *italics* in this schedule are to be filled up as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

SCHEDULE II.

(See sections 24 and 50).

Certificate of Receipt of Notice.

I,
do hereby certify that, on the day of , notice was duly entered in my Marriage Notice Book of the marriage intended between the parties therein named and described, delivered under the hand of
one of the parties, (that is to say) :—

Names.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.	Church, chapel or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in different districts.
James Smith.	*Widower.*	*Carpenter.*	*Of full age.*	*16, Clive Street.*	*23 days.*	*Free Church of Scotland Church, Calcutta.*	
Martha Green.	*Spinster.*	...	*Minor.*	*20, Hastings' Street.*	*More than a month.*		

and that the declaration required by section seventeen [*or*] forty-one of "The Indian Christian Marriage Act, 1872," has been duly made by the said (*James Smith*).

Date of notice entered
Date of certificate given } The issue of this certificate has not been prohibited by any person authorized to forbid the issue thereof.

Witness my hand, this day of *seventy-two.*

(*Signed*)

This certificate will be void, unless the marriage is solemnized on or before the day of

[The *italics* in the schedule are to be filled up as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

SCHEDULE III.

(See section 28).

FORM OF REGISTER OF MARRIAGES.

Quarterly Returns

of

MARRIAGES

for

The Archdeaconry of ... { *Calcutta.* / *Madras.* / *Bombay.* }

I, ———, Registrar of the Archdeaconry of { *Calcutta,* / *Madras,* / *Bombay,* } do hereby certify that the annexed are correct copies of the originals and Official Quarterly Returns of Marriage within the Archdeaconry of { *Calcutta,* / *Madras,* / *Bombay,* } as made and transmitted to me for the quarter commencing the day of ending the day of in the year of Our Lord

[*Signature of Registrar.*]

Registrar of the Archdeaconry of { *Calcutta.* / *Madras.* / *Bombay.* }

MARRIAGES solemnized at { *Allahabad,* / *Barrackpore,* / *Bareilly,* / *Calcutta, &c., &c.* }

When married.			Names of parties.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.	By banns or license.	Signatures of the parties.	Signatures of two or more witnesses present.	Signature of the person solemnizing the marriage.
Year.	Month.	Day.	Christian.	Surname.									

SCHEDULE IV.

(See sections 32 and 54).

Marriage Register Book.

Number.	When married.			Names of Parties.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.
	Day.	Month.	Year.	Christian name.	Surname.					
1				*James* ...	*White* ...	26 *years*...	*Widower*...	*Carpenter*...	*Agra* ...	*William White.*
				Martha ...	*Duncan* ...	17 *years* ...	*Spinster* ...	.....	*Agra* ...	*John Duncan.*

Married in the

This marriage was solemnized between us { *James White,* / *Martha Duncan,* } in the presence of us { *John Smith,* / *John Green.* }

Certificate of Marriage.

Number.	When married.			Names of parties.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.
	Day.	Month.	Year.	Christian name.	Surname.					
1				*James* ...	*White* ...	26 *years* ...	*Widower* ...	*Carpenter*...	*Agra* ...	*William White.*
				Martha ...	*Duncan* ...	17 *years* ...	*Spinster* ...	... ...	*Agra* ...	*John Duncan.*

Married in the

This marriage was solemnized between us { *James White,* / *Martha Duncan,* } in the presence of us { *John Smith,* / *John Green.* }

SCHEDULE V.

(*See section* 2.)

ENACTMENTS REPEALED.

Number and year.	TITLE.	Extent of repeal.
Statute 58 Geo. 3, cap. 84.	An Act to remove Doubts as to the Validity of certain marriages had and solemnized within the British territories in India.	The whole.
Statute 14 & 15 Vic., cap. 40.	An Act for Marriages in India ...	The whole.
Act No. V of 1852	An Act for giving effect to the provisions of an Act of Parliament, passed in the 15th year of the reign of Her present Majesty, entituled "An Act for Marriages in India."	So much as has not been repealed.
Act No. V of 1865	The Indian Marriage Act, 1865 ...	The whole Act, except so far as it relates to the Straits Settlements.
Act No. XXII of 1866.	An Act to extend the Indian Marriage Act, 1865, to the Hyderabad Assigned Districts and the cantonments of Secunderabad, Trimungerry and Aurungabad.	The whole.

ACT No. XVIII OF 1872.

Received the Governor General's assent on the 29*th August* 1872.

An Act to amend the Indian Evidence Act, 1872.

Preamble.

WHEREAS it is expedient to amend the Indian Evidence Act, 1872; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Indian Evidence Act Amendment Act";

Amendment of Act I of 1872, section 32, clauses 5 and 6.

2. In section thirty-two of the Indian Evidence Act, 1872, clauses five and six, after the word "relationship," the words "by blood, marriage or adoption" shall be inserted.

3. In section forty-one of the same Act, lines seventeen, twenty and twenty-three, after the word "judgment," the words "order or decree" shall be inserted. Amendment of section 41.

4. In section forty-five of the same Act, line five, after the word "art," the words "or in questions as to identity of handwriting" shall be inserted. Amendment of section 45.

5. In section fifty-seven of the same Act, paragraph (13), after the word "road," the words "on land or at sea" shall be inserted. Amendment of section 57.

6. In section sixty-six of the same Act, line five, after the word "is," the words "or to his attorney or pleader" shall be inserted. Amendment of section 66.

7. In section ninety-one of the same Act, Exception 2, for the words "under the Indian Succession Act," the words "admitted to probate in British India," shall be substituted. Amendment of section 91.

8. [*Repealed by Act No. XII of* 1876.]

9. In section one hundred and eight of the same Act, line one, for the word "When," the words "Provided that when" shall be substituted; and, in the last line, for the word "on," the words "shifted to" shall be substituted. Amendment of section 108.

10. In section one hundred and twenty-six of the same Act, line twenty-two, and in section one hundred and twenty-eight of the same Act, line six, after the word "barrister," the word "pleader" shall be inserted. Amendment of sections 126 and 128.

In section one hundred and twenty-six of the same Act, line fifteen, for the word "criminal," the word "illegal" shall be substituted.

11. In section one hundred and fifty-five of the same Act, paragraph (2), for the word "had," the word "accepted" shall be substituted. Amendment of section 155.

12. [*Repealed by Act No. X of* 1873.]

ACT No. XIX OF 1872.

Received the Governor General's assent on the 29th August 1872.

An Act to amend the definition of 'Coin' contained in the Indian Penal Code.

WHEREAS it is expedient to amend the definition of 'coin' contained in the Indian Penal Code, section two hundred and thirty; It is hereby enacted as follows:— Preamble.

1. For the first paragraph of the said section, the following shall be substituted: Amendment of section 230, Act XLV of 1860

"230. [*See above vol. I, p.* 451.]

ACT No. XXI OF 1872.

Received the Governor General's assent on the 5th September 1872.

An Act to facilitate the admission of Native Military Lunatics into Asylums.[a]

Preamble.

WHEREAS it is expedient to facilitate the admission of Native Military Lunatics into Asylums; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Native Military Lunatics' Act, 1872:"

Extent.

It extends to the whole of British India and, so far as regards subjects of Her Majesty, to the dominions of Native Princes and States in India in alliance with Her Majesty.

Report of insanity of Native officer or soldier.

2. Whenever any Native officer, non-commissioned officer or soldier appears to be insane, the officer commanding the regiment or detachment to which he belongs shall report the case to the general officer commanding the division or district, or force, in which such regiment or detachment is serving.

Examination of Native.

3. Such general officer shall thereupon cause the said Native to be examined by a committee composed of at least two medical officers, or (if this be impracticable) by a regimental committee comprising the officer in command of the wing or squadron to which the Native belongs, and the medical officer in charge of the corps or detachment of which such wing or squadron forms part.

Order for reception in Asylum.

4. If the said committee or regimental committee (as the case may be) are satisfied that the Native is insane, the officer commanding the division or district or force, may, if he thinks fit, make an order, under his hand, for the reception of the said Native into a Lunatic Asylum, and shall then send him thither under military escort;

Reception and detention in Asylum.

and the officer in charge of such Asylum shall receive the Native into the Asylum and detain him therein until he is discharged therefrom in accordance with the local military regulations in force for the time being.

Expenses of lunatic.

5. The pay-master of the military circle within which any such Asylum is situate shall pay to the officer in charge of such Asylum the expense of the lodging, maintenance, clothing and medicine of every Native so received and detained.

6. [*Repealed by Act No. XII of* 1876.]

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[a] For rules as to the treatment of insane Native soldiers see *Gazette of India*, 15th May 1875, p. 233.

THE GOVERNMENT SAVINGS BANKS ACT, 1873.

CONTENTS.

PREAMBLE.

Preliminary.

SECTIONS.

1. Short title.
   Local extent.
2. [*Repealed.*]
3. Interpretation-clause.

Deposits belonging to the Estates of deceased Persons.

4. Payment on death of depositor.
5. Payment to be a discharge.
   Saving of right of executor.
   Saving of right of creditor.
6. Security for due administration.
7. Power to administer oath.
   Penalty for false statements.
8. Deposit when excluded in computing Court Fees.
9. Act not to apply to deposits belonging to estates of European soldiers or deserters.

Deposits belonging to Minors.

10. Payment of deposits to minor or guardian.
11. Legalization of like payments heretofore made.

Deposits belonging to Lunatics.

12. Payment of deposits belonging to lunatics.

Deposits made by Married Women.

13. Payment of married women's deposits.

Rules.

14. Rules regulating certificates under section 8 and payments under section 10, 12 or 13.

ACT No. V OF 1873.

Received the Governor General's assent on the 28th January 1873.

An Act to amend the Law relating to Government Savings Banks.

Preamble.

WHEREAS it is expedient to amend the law relating to the payment of deposits in Government Savings Banks; It is hereby enacted as follows:—

Preliminary.

Short title.

1. This Act may be called "The Government Savings Banks Act, 1873":

Local extent.

It extends to the whole of British India.

2. [*Repealed by Act No. XII of* 1873.]

Interpretation-clause.

3. In this Act—

"Depositor." "Deposit."

"Depositor" means a person by whom, or on whose behalf, money has been heretofore, or shall be hereafter, deposited in a Government Savings Bank, and "deposit" means money so deposited:[a]

"Secretary."

"Secretary" includes every person empowered to manage a Government Savings Bank;

"Minor."

and "Minor" means a person who has not completed the age of eighteen years.

Deposits belonging to the Estates of deceased Persons.

Payment on death of depositor.

4. If a depositor dies, leaving in a Government Savings Bank a sum of money not exceeding one thousand rupees,

and if probate of his will or letters of administration of his estate, or a certificate granted under Act No. XXVII of 1860 *(for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons)*, is not produced to the Secretary of such Bank within three months of the death of the said depositor,

the Secretary of such Bank may pay the said sum of money to any person appearing to him to be entitled to receive it, or to administer the estate of the deceased.

Payment to be a discharge.

5. Such payment shall be a full discharge from all further liability in respect of the money so paid:

Saving of right of executor.

But nothing herein contained precludes any executor or administrator, or other representative of the deceased, from recovering from the person receiving

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a Without the special permission of the head of the office, which should be very sparingly given, no one may deposit in any Government Savings Bank in India more than Rs. 500 in one year or more than Rs. 1,000 in all. Ordinarily, no one may open for himself or the members of his family more than one account. Financial Department Notification No. 3937, dated 24th December 1873.—*Gazette of India*, 27th December 1873, p. 1028.

the same the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.

Saving of right of creditor.

And any creditor or claimant against the estate of the deceased may recover his debt or claim out of the money paid under this Act, or the said Act No. XXVI of 1855, to any person, and remaining in his hands unadministered, in the same manner and to the same extent as if the latter had obtained letters of administration of the estate of the deceased.

Security for due administration.

6. The Secretary of any such Bank may take such security as he thinks necessary from any person to whom he pays any money under section four for the due administration of the money so paid,

and he may assign the said security to any person interested in such administration.

Power to administer oath

7. For the purpose of ascertaining the right of the person claiming to be entitled as aforesaid, the Secretary of any such Bank may take evidence on oath or affirmation according to the law for the time being relating to oaths and affirmations.

Penalty for false statements.

Any person who, upon such oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of an offence under section one hundred and ninety-three of the Indian Penal Code.

Deposit when excluded in computing Court Fees.

8. Where the amount of the deposit belonging to the estate of a deceased depositor does not exceed one thousand rupees, such amount shall be excluded in computing the fee chargeable, under the Court Fees' Act, 1870, on the probate, or letters of administration, or certificate (if any), granted in respect of his property :[a]

Provided that the person claiming such probate or letters or certificate shall exhibit to the Court authorized to grant the same a certificate of the amount of the deposit in any Government Savings Bank belonging to the estate of the deceased. Such certificate shall be signed by the Secretary of such Bank, and the Court shall receive it as evidence of the said amount.

Act not to apply to deposits belonging to estates of European soldiers or deserters.

9. Nothing hereinbefore contained applies to money belonging to the estate of any European officer, non-commissioned officer, or soldier dying in Her Majesty's service in India, or of any European who, at the time of his death, was a deserter from the said service.

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[a] See 9 Geo. IV, c. 92, s. 40.

Deposits belonging to Minors.

Payment of deposits to minor or guardian.

10. Any deposit made by, or on behalf of, any minor, may be paid to him personally, if he made the deposit, or to his guardian[a] for his use, if the deposit was made by any person other than the minor, together with the interest accrued thereon.

The receipt of any minor or guardian, for money paid to him under this section, shall be a sufficient discharge therefor.

Legalization of like payments heretofore made.

11. All payments of deposits heretofore made to minors or their guardians by any Secretary of a Government Savings Bank shall be deemed to have been made in accordance with law.

Deposits belonging to Lunatics.

Payment of deposits belonging to lunatics.

12. If any depositor becomes insane or otherwise incapable of managing his affairs,

and if such insanity or incapacity is proved to the satisfaction of the Secretary of the Bank in which his deposit may be,

such Secretary may, from time to time, make payments out of the deposit to any proper person,

and the receipt of such person, for money paid under this section, shall be a sufficient discharge therefor.

Where a Committee or Manager of the depositor's estate has been duly appointed, nothing in this section authorizes payments to any person other than such Committee or Manager.

Deposits made by Married Women.

Payment of married women's deposits.

13. Any deposit made by or on behalf of a married woman, or by or on behalf of a woman who afterwards marries, may be paid to her, whether or not the Indian Succession Act, 1865, section four, applies to her marriage; and her receipt for money paid to her under this section shall be a sufficient discharge therefor.

Rules.

Rules regulating certificates under section 8, and payments under section 10, 12 or 13.

14. All certificates under section eight, and all payments under section ten, section twelve or section thirteen, shall be respectively granted and made by the Secretary of the Bank, subject to such rules consistent with this Act as the Governor General in Council may, from time to time, prescribe.

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[a] See Financial Department Notification No. 6991, dated 8th December 1874, *Gazette of India*, 12th December 1874, p. 602.

ACT No. VI OF 1873.

Received the Governor General's assent on the 28th January 1873.

An Act to amend the Law relating to the Transhipment of Goods imported by Steamer, and for other purposes.

WHEREAS it is expedient to amend the law relating to the transhipment of goods imported by steamer; It is hereby enacted as follows:— Preamble.

1. This Act may be called "The Transhipment of Goods Act, 1873": Short title.

It extends to the ports of Calcutta, Madras, Bombay, Karáchi, Aden, Rangoon, Maulmain, Akyab, and to such other British Indian ports as the Governor General in Council may from time to time, by notification in the *Gazette of India*, direct in this behalf. Local extent.

2. Act No. XX of 1867 (*to authorize the transhipment without payment of duty of goods imported into Calcutta, Madras and Bombay by Steamers*) is repealed. But all rules, rates and regulations prescribed under the said Act shall be deemed to have been prescribed under this Act. Repeal of Act XX of 1867.

3. Subject to the provisions hereinafter contained, the chief officer of customs of every port to which this Act extends for the time being may, on application of any person interested as owner, agent, consignee or otherwise in any goods imported by steamer into such port, grant leave to tranship the same without payment of duty at the port of transhipment, and without any security or bond for the due arrival and entry of the goods at the port of destination:[a] Power to permit transhipment without payment of duty.

Provided that such goods have been specially and distinctly manifested or declared at the time of import as for transhipment to some other British Indian or foreign port. Proviso.

4. The power conferred by section three shall be exercised subject to such rules as the Local Government may from time to time prescribe by notification in the official Gazette.[b] Rules regulating exercise of power.

5. A transhipment fee on each bale or package of any goods or class of goods transhipped under this Act, may be levied at such rates and under such regulations as the Local Government, with the previous sanction of the Governor General in Council, from time to time prescribes by notification in the official Gazette. Levy of transhipment fee.

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[a] This modifies Act No. VI of 1863, sec. 110.

[b] *Bombay Govt. Gazette*, 26th Feb. 1874, p. 156: *British Burma Gazette*, 24th May 1873, pt. II, p. 112.

Power to prohibit transhipment.

6. The Governor General in Council may from time to time, by order notified in the *Gazette of India*, prohibit the transhipment, at any specified port or at all ports, of any specified class of goods, or prescribe any special mode of transhipping any specified class of goods, and may, by like notification, cancel such order.

Duty on opium re-exported by sea.

7. Opium imported by sea into any British Indian port may, if the Local Government think fit, but not otherwise, be re-exported by sea from the same port on payment of a duty equal in amount to the fee to which it would have been liable if it had been transhipped at such port.

Act to be read as part of Act VI of 1863.

8. This Act shall be read as part of the Consolidated Customs Act, and shall not be construed as in any respect limiting the power of the customs officers to levy duty or to require such bonds or other securities as are authorized by the same Act.

THE INDIAN OATHS ACT, 1873.

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title.
   Local extent.
2. [*Repealed.*]
3. Saving of certain oaths and affirmations.
4. Authority to administer oaths and affirmations.
5. Oaths or affirmations to be made by—
   witnesses:
   interpreters:
   jurors.
6. Affirmation by Natives or by persons objecting to oaths.
7. Forms of oaths and affirmations.
8. Power of Court to tender certain oaths.
9. Court may ask party or witness whether he will make oath proposed by opposite party.
10. Administration of oath if accepted.
11. Evidence conclusive as against person offering to be bound.
12. Procedure in case of refusal to make oath.
13. Proceedings and evidence not invalidated by omission of oath or irregularity.
14. Persons giving evidence bound to state the truth.
15. Amendment of Act XLV of 1860, sections 178 and 181.
16. Official oaths abolished.

ACT No. X OF 1873.

Received the Governor General's assent on the 8th April 1873.

An Act to consolidate the law relating to Judicial Oaths, and for other purposes.

WHEREAS it is expedient to consolidate the law relating to judicial oaths, affirmations and declarations, and to repeal the law relating to official oaths, affirmations and declarations; It is hereby enacted as follows :— Preamble.

I.—Preliminary.

1. This Act may be called "The Indian Oaths Act, 1873:" Short title.

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty. Local extent.

2. [*Repealed by Act No. XII of* 1873.]

3. Nothing herein contained applies to proceedings before Courts Martial, or to oaths, affirmations or declarations prescribed by any law which, under the provisions of the Indian Councils' Act, 1861, the Governor General in Council has not power to repeal. Saving of certain oaths and affirmations.

II.—Authority to administer Oaths and Affirmations.

4. The following Courts and persons are authorized to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law:— Authority to administer oaths and affirmations.

(*a.*) All Courts and persons having by law or consent of parties authority to receive evidence;

(*b.*) The Commanding Officer of any military station occupied by troops in the service of Her Majesty: provided

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

III.—Persons by whom Oaths or Affirmations must be made.

5. Oaths or affirmations shall be made by the following persons:— Oaths or affirmations to be made by—

(*a*) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person witnesses:

having by law or consent of parties authority to examine such persons or to receive evidence:

interpreters: jurors.

(*b*) interpreters of questions put to, and evidence given by, witnesses, and

(*c*) jurors.

Nothing herein contained shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

Affirmation by Natives or by persons objecting to oaths.

6. Where the witness, interpreter or juror is a Hindú or Muhammadan,

or has an objection to making an oath,

he shall, instead of making an oath, make an affirmation.

In every other case the witness, interpreter or juror shall make an oath.

IV.—Forms of Oaths and Affirmations.

Forms of oaths and affirmations.

7. All oaths and affirmations made under section five shall be administered according to such forms as the High Court may from time to time prescribe.[a]

And until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

Explanation.—As regards oaths and affirmations administered in the Court of the Recorder of Rangoon and the Court of Small Causes of Rangoon, the Recorder of Rangoon shall be deemed to be the High Court within the meaning of this section.

Power of Court to tender certain oaths.

8. If any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

Court may ask party or witness whether he will make

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section eight, if such oath or affirmation is made by the other party to, or by any witness in, such proceed-

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[a] *Calcutta Gazette*, 20th August 1873, p. 984: *North-Western Provinces Gazette*, 3rd May 1873, p. 604: *Panjáb Gazette*, 15th May 1873, Part III, p. 209.

ing, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation:

Oath proposed by opposite party.

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

10. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a Commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court.

Administration of oath if accepted.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

Evidence conclusive as against person offering to be bound.

12. If the party or witness refuses to make the oath or solemn affirmation referred to in section eight, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

Procedure in case of refusal to make oath.

V.—Miscellaneous.

13. No omission[a] to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

Proceedings and evidence not invalidated by omission of oath or irregularity.

14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.[b]

Persons giving evidence bound to state the truth.

15. The Indian Penal Code, sections 178 and 181, shall be construed as if, after the word "oath," the words "or affirmation" were inserted.

Amendment of Act XLV of 1860, sections 178 and 181.

16. Subject to the provisions of sections three and five, no person appointed to any office shall, before entering on the execution of the duties of his

Official oaths abolished.

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[a] This "includes any omission, and is not limited to accidental or negligent omissions," *Reg.* v. *Sewa Bhogta*, 14 Beng. 294.

[b] See Act No. XLV of 1860, sec. 191.

office, be required to make any oath or to make or subscribe any affirmation or declaration whatever.

ACT No. XIV of 1873.

Received the Governor General's assent on the 11th September 1873.

An Act to provide for the security and application of the effects of Officers and Soldiers becoming insane on service, but not removed, put on half-pay, or discharged.[a]

Preamble.

WHEREAS it is expedient to provide for the security and application of the effects of Officers and Soldiers becoming insane on service, but not removed, put on half-pay, or discharged; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Lunatic Soldiers' Property Act, 1873:"

Local extent.

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Native Princes and States in India in alliance with Her Majesty;

Interpretation-clause.

2. In this Act—

'Officer.'

"Officer" means a Commissioned Officer of Her Majesty's Army, or of Her Majesty's Indian Army; and

'Soldier.'

"Soldier" means a Soldier of Her Majesty's Army, or a European Soldier of Her Majesty's Indian Army, including a Warrant and a Non-Commissioned Officer.

Securing of effects of insane by Committee.

3. When an officer or soldier becomes insane on service, but is not removed, put on half-pay, or discharged, on the ground of insanity, such Committee of officers as the Governor General in Council may from time to time prescribe, shall immediately secure all such of his effects as are within the territories to which this Act extends.

Application of effects.

4. Such effects shall be liable to be applied in or towards payment of any expenses necessarily incurred in the maintenance and removal of such officer or soldier to any place in India, and of any such expenses and debts incurred and owing by him as would, under Part I of the Regimental Debts' Act, 1863, be preferential charges on his moveable property in case he had

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[a] This Act extends the provisions of Part III of the Regimental Debts' Act (26 & 27 Vic., c. 57) to cases of European lunatics retained on the strength of their regiments.

died on service, with the like preference, in the like order, and subject to the like provision for decision of doubt or difference, as would in that case apply, as nearly as may be, *mutatis mutandis.*

Stay of proceedings by Committee on payment of expenses and debts by representative.

5. If any person who would, if such officer or soldier were dead, be entitled to take out representation to him (otherwise than as a creditor), or his wife (if any), or any near relative, pays in full the expenses and debts aforesaid, the said Committee shall not further interfere in relation to the property.

Administration by Committee.

6. If such payment is not made, then, within one month after the insanity is known at the quarters where the property is, the said Committee may sell and convert into money such part of the property as they think fit,

and, after paying out of the proceeds the expenses attending the discharge of their duties, shall pay thereout the expenses and debts aforesaid,

and shall dispose of any property then remaining in their hands in such manner as may from time to time be prescribed by the Governor General in Council, or by such officer as he appoints in this behalf, to the end that the same may be applied for the benefit of the officer or soldier to whom it belongs.

Validation of payments, sales and dispositions by Committee.

7. Every payment or application of money, and every sale or other disposition of property, made by any Committee in pursuance of this Act, shall be valid as against all persons whomsoever.

Indemnity.

And every officer belonging to any such Committee shall be discharged from all liability in respect of the money or other property so paid, applied or disposed of.

Power to make regulations.

8. The Governor General in Council may, from time to time, prescribe such regulations as may seem fit for the better execution of any of the purposes of this Act.[a]

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[a] In exercise of this power the Governor General in Council has directed that Committees for the purposes of the above Act shall be composed and appointed in the same manner as Committees of Adjustment under Clause 33 of the Regulations annexed to the Royal Warrant made on the 30th September 1864 under the Regimental Debts' Act, 1863, and shall be guided in their proceedings by Clause 34 of the said Regulations, in so far as the same may be found applicable.

Whenever such Committee may have, in the exercise of the discretion allowed them by section 6 of the said "Lunatic Soldiers' Property Act, 1873," reserved from sale any portion of the lunatic's property, they shall make a special report of the matter to the Military Secretary to the Government of the Presidency in which such property is situated, and shall be guided by such instructions as they may thereupon receive from him regarding the disposal of such property—*Gazette of India*, 28th February 1874, p. 130.

THE ADMINISTRATOR GENERAL'S ACT, 1874.

ARRANGEMENT OF SECTIONS.

PREAMBLE.

PART I.

PRELIMINARY.

SECTIONS.

1. Short title.
   Local extent.
   Commencement.
2. Repeal of Acts.
3. Interpretation-clause.

PART II.

OF THE OFFICE OF ADMINISTRATOR GENERAL.

4. Designation of the Administrators General in the three Presidencies.
5. Appointment, suspension and removal of Administrators General.
6. Qualification of future and continuance of existing incumbents.
7. Administrator General not an officer of High Court.
8. Probates, &c., granted by Supreme Courts to Ecclesiastical Registrars to have same effect as if granted to Administrator General.
9. No Administrator General to be Ecclesiastical Registrar.
   Administrator General not to hold any other office without sanction of Government.
10. Penalty for trading.
    Exception.
11. Security to be given by Administrator General.
    Substitution of security or sureties.
12. No security nor oath to be required from Administrator General.
13. Appointment of officiating Administrator General.

PART III.

OF THE RIGHTS, POWERS AND DUTIES OF THE ADMINISTRATOR GENERAL.

(*a*).—*Grants of Letters of Administration and Probate to the Administrator General.*

14. As regards Administrator General, High Court at Presidency town to be deemed a Court of competent jurisdiction within meaning of Act X of 1865, sections 187 and 190.
15. Administrator General entitled to letters of administration, unless granted to next-of-kin.

SECTIONS.

Administrator General entitled in preference to creditor, non-universal legatee or friend.
16. When Administrator General is to administer estates of persons other than Hindús, &c.
17. Power to direct Administrator General to apply for administration.
Administration to effects of Hindús, &c., when granted under this section.
Costs of unnecessary application.
18. Power to enjoin Administrator General to collect and hold assets until right of succession or administration is ascertained.
Rate of commission payable in such case.
19. Grant of probate to executor appearing in course of proceedings taken by Administrator General.
Costs of proceedings taken by Administrator General to be paid out of estate.
20. If no executor or next-of-kin appear or give necessary security, administration to be granted to Administrator General.
21. Administrator General in certain cases to secure and distribute the effects of soldiers.
Proviso.
22. Power to grant Administrator General letters limited to purpose of dealing with assets in accordance with Regimental Debts Act.
23. Administrator General not precluded from applying for letters within one month after death.
24. After revocation, letters granted to Administrator General to be deemed as to him to have been voidable only.
Exception.
Proviso.
25. Payments made by Administrator General prior to revocation.
26. Recall of Administrator General's administration, and grant of probate, &c., to executor or next-of-kin.
Time within which application to revoke must be made.
27. Costs of obtaining administration, &c., may, on revocation, be ordered to be paid to Administrator General out of assets.
28. Exclusion of creditors who have not proved, from assets with which a dividend is made.
Distribution of assets by Administrator General when allowed against claims of which he had no notice.
Person receiving payments liable to refund.
What to be notice of debt or claim.
29. Letters to be granted to Administrator General by his name of office.
Authority given by such letters.
30. Grant of probate to Administrator General named as executor by virtue of his office.
31. Transfer by private executor or administrator of interest under probate or letters.
32. Appointment of official trustee as trustee of assets carried to separate accounts.
33. Vesting of estates, &c., in successor of Administrator General.

SECTIONS.

(*b*).—*Suits by and against the Administrator General.*

34. Administrator General to sue and be sued in his name of office.
Suit not to abate by death, &c.
Proviso as to costs.
35. Creditors' suits against Administrator General.

(*c*).—*Grant of Certificates by the Administrator General.*

36. In what case Administrator General may grant certificate.
No certificate where probate granted or for money in Government Savings Bank.
37. Grant of certificate to creditors.
Proviso.
38. Administrator General not bound to grant certificate unless satisfied of claimant's title, &c.
39. Copy of certificate with receipt annexed, when signed by certificate-holder, to be a discharge.
Right of executor or administrator against certificate-holder.
Right of creditor against assets in hands of certificate-holder.
40. Administrator General not bound to take out administration on account of effects for which he has granted certificate.
41. Fee for certificate.

(*d*).—*Expenses of the Administrator General's Establishment.*

42. Administrator General to defray expenses of establishment.

(*e*).—*Accounts and Schedules.*

43. Administrator General to keep separate account for each estate.
Accounts to be open to inspection on payment of fee.
44. Administrator General to furnish half-yearly schedules.
Schedules to be filed and published.
Copies of schedules.

PART IV.

OF THE AUDIT OF THE ADMINISTRATOR GENERAL'S ACCOUNTS.

45. Government to appoint auditors.
46. Auditors to examine schedule, and report to Government.
47. Power to summon witnesses and to call for books, &c.
Penalty for non-attendance.
48. Costs of preparing schedules, &c.
49. Special report to Government if accounts appear incorrect.

SECTIONS.

50. Proceedings upon such report.
51. Costs of reference, &c., how defrayed.

PART V.

OF THE COMMISSION OF THE ADMINISTRATOR GENERAL.

52. Commission to be received by Administrators General.
53. Section 52 not to apply to property of officers and soldiers dying on service.
Commission on such property.
54. What expenses, &c., commission is to cover.
How payable.
Commission retained to be deemed a distribution.
55. Commission of Administrator General of Bengal may be raised and again reduced.
Commission of Administrators General of Madras and Bombay may be reduced and again raised.
Proviso.
56. Commission not to be charged by executor or administrator other than Administrator General.
Bequest in favour of executors not affected.

PART VI.

MISCELLANEOUS.

57. Power to make rules—
For custody of assets.
For remittance of money.
For guidance of Administrator General.
Proviso as to rules now in force.
58. Publication of new rules.
59. Power to decide when commission shall be deemed payable.
60. Orders of Court to be equivalent to decrees.
61. False evidence.
62. Assets unclaimed for fifteen years to be transferred to Government.
Proviso.
63. Mode of proceeding by claimant to recover principal money so transferred.
64. District Judge in certain cases to take charge of property of deceased persons, and to report to Administrator General.
65. Act not to require administration of estates of soldiers, unless Administrator General authorized by Military Secretary or Committee of Adjustment.
66. Act X of 1865 and Act X of 1866 not to affect Administrator General.
Saving of provisions of Presidency Police Acts as to petty estates.

ACT No. II of 1874.

Received the Governor General's assent on the 10th February 1874.

An Act to consolidate and amend the law relating to the office and duties of Administrator General.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the office and duties of Administrator General; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called "The Administrator General's Act, 1874:"

Local extent.

It extends to the whole of British India and, so far as regards British subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty;

Commencement.

And it shall come into force at once.

Repeal of Acts.

2. Act No. XXIV of 1867 (*to consolidate and amend the law relating to the office and duties of Administrator General*) and Act No. XIX of 1869 (*to facilitate administration to the estates of deceased British subjects in the Hyderabad Assigned Districts*) and Act No. V of 1870 (so far as it relates to the Administrator General) are hereby repealed.

All things duly done under any of the enactments hereby repealed shall be considered as having been done under this Act.

Interpretation-clause.

3. In this Act—unless there be something repugnant in the subject or context—

"Presidency of Bengal."

"Presidency of Bengal" includes

(*a*) the territories for the time being respectively under the governments of the Lieutenant-Governors of Bengal, the North-Western Provinces and the Panjáb;

(*b*) the territories for the time being respectively under the administrations of the Chief Commissioners of Oudh, the Central Provinces, British Burma, Ajmer and Mairwára, Assam and the Andaman and Nicobar Islands;

(*c*) such of the dominions of Princes and States aforesaid as the Governor General in Council may, by notification in the *Gazette of India*, from time to time direct:

"Presidency of Madras."

"Presidency of Madras" includes

(*a*) the territories for the time being under the government of the Governor of Fort St. George in Council;

(*b*) such of the dominions aforesaid as the Governor General in Council may, by notification in the *Gazette of India*, from time to time direct[a];

(*c*) Coorg;

(*d*) Mysore;

"Presidency of Bombay" means

(*a*) the territories for the time being under the government of the Governor of Bombay in Council; "Presidency of Bombay."

(*b*) such of the dominions aforesaid as the Governor General in Council may, by notification in the *Gazette of India*, from time to time direct;

(*c*) the Haidarábád Assigned Districts:

"Presidency Town" means the town of Calcutta, Madras or Bombay, as the case may be: "Presidency Town."

"Government" means the Governor General in Council, so far as the Act relates to the Presidency of Bengal; the person for the time being administering the executive government of the Presidency of Fort St. George, so far as the Act relates to the Presidency of Madras; and the person for the time being administering the executive Government of the Presidency of Bombay, so far as the Act relates to the Presidency of Bombay: "Government."

"Letters of Administration" shall include any letters of administration, whether general or limited, or with a will annexed, and letters *ad colligenda bona*: "Letters of Administration."

"Next-of-kin" includes a widower or widow of a deceased person, or any other person who, by law and according to the practice of the Courts, would be entitled to letters of administration in preference to a creditor or legatee of the deceased: "Next-of-kin."

"Officer" means a commissioned officer of Her Majesty's Army, or of Her Majesty's Indian Army: "Officer."

"Soldier" means a soldier of Her Majesty's Army, or European soldier of Her Majesty's Indian Army, including a warrant and a non-commissioned officer: "Soldier."

"Assets" includes immoveable as well as moveable property. "Assets."

PART II.

Of the Office of Administrator General.

4. In each of the Presidencies of Bengal, Madras and Bombay, there shall be an Administrator General. Designation of the Administrators G

[a] In exercise of this power the Governor General in Council has directed that the words "Presidency of Madras" shall include for the purpose of this Act the dominions of the Nizám of Haidarábád, Foreign Department Notification No. 91J, dated 26th May 1874, *Gazette of India*, 30th May 1874, p. 328.

neral in the three Presidencies.

The said Administrators General shall be called respectively the Administrator General of Bengal, the Administrator General of Madras, and the Administrator General of Bombay.

Appointment, suspension and removal of Administrators General.

5. Such officers shall be appointed and may be suspended or removed by the authorities hereinafter mentioned respectively ; that is to say :—

The Administrator General of Bengal, by the Governor General in Council :

the Administrator General of Madras, by the Government of Fort St. George ; and

the Administrator General of Bombay, by the Government of Bombay.

Qualification of future and continuance of existing incumbents.

6. Any person hereafter appointed to the office of Administrator General or officiating Administrator General of any of the said Presidencies, shall be a member of the Bar of England or Ireland, or of the Faculty of Advocates in Scotland ; but any person now holding such office shall continue to hold the same, subject to the provisions contained in the other sections of this Act.

Administrator General not an officer of High Court.

7. The Administrator General shall not be deemed in that capacity to be an officer of any High Court.

Probates, &c., granted by Supreme Courts to Ecclesiastical Registrars to have same effect as if granted to Administrator General.

8. All probates and letters of administration granted by any of the late Supreme Courts of Judicature to the Ecclesiastical Registrar of such Court in virtue of his office, shall have the same effect in all respects as to any act hereafter to be done or required to be done under this Act, as if they had been granted to the Administrator General.

No Administrator General to be Ecclesiastical Registrar. Administrator General not to hold any other office without sanction of Government.

9. No person now holding the office of Administrator General, or hereafter to be appointed to such office in any of the said Presidencies, shall hold the office of Ecclesiastical Registrar ; nor, without the express sanction of Government, any other office together with that of Administrator General :

Provided that the Administrator General of the Presidency may be appointed Official Trustee under Act No. XVII of 1864 *(to constitute an office of official trustee)* :

Provided also, that the Administrator General of Bengal may hold the office of Receiver of the High Court of Judicature at Fort William.

Penalty for trading. Exception.

10. It is hereby declared to be an offence punishable in manner provided by section one hundred and sixty-eight of the Indian Penal Code, for any Administrator General to trade or traffic for his own benefit, or for the benefit of any other person, unless so far as appears to him to be expedient for the due management of the estates which come into his charge under the

provisions of this Act, and for the sole benefit of the several persons entitled to the proceeds of such estates respectively; but this exception is not to be construed to alter the civil liabilities of the Administrator General as trustee of such estates.

Security to be given by Administrator General.

11. Unless the Governor General in Council, or the Government, with the sanction of the Governor General in Council, otherwise orders, every Administrator General hereafter to be appointed shall give security to the Secretary of State for India for the due execution of his office, for one lákh of rupees by his own bond, and for another lákh of rupees, or for separate sums amounting together to one lákh of rupees, by the deposit of Government securities, or by the joint and several bond or bonds of two or more sureties to be approved by Government, or partly by such deposit and partly by such bond or bonds:

Substitution of security or sureties.

Provided that every Administrator General may, with the consent of Government, substitute either of the said two last-mentioned kinds of security for another previously given for such last-mentioned lákh or any part of it;

and every Administrator General may, with the consent of Government, and shall from time to time when required by Government so to do, cause fresh sureties to be substituted for any of those previously bound, so far as the security relates to the due execution of his office for the time then to come.

No security nor oath to be required from Administrator General.

12. No Administrator General shall be required by any Court to enter into any administration bond, or to give other security to the Court, on the grant of any letters of administration to him in virtue of his office.

No Administrator General shall be required to verify, otherwise than by his signature, any petition presented by him under the provisions of this Act, and if the facts stated in any such petition are not within the Administrator General's own personal knowledge, the petition may be subscribed and verified by any person competent to make the verification.

Whoever makes a statement in any such petition which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

Appointment of officiating Administrator General.

13. Whenever any person holding the office of Administrator General obtains leave of absence, the Government may appoint some person to officiate as Administrator General, and such person, while so officiating, shall be subject to the same conditions and be bound by the same responsibilities as the Administrator General by any law for the time being in force, and he

shall be deemed to be Administrator General for the time being under this Act, and shall be liable to give security under section eleven in like manner as if he had been appointed Administrator General.

PART III.

Of the Rights, Powers and Duties of the Administrator General.

(a).—Grants of Letters of Administration and Probate to the Administrator General.

As regards Administrator General, High Court at Presidency town to be deemed a Court of competent jurisdiction within meaning of Act X of 1865, sections 187 and 190.

14. So far as regards the Administrator General of any of the Presidencies of Bengal, Madras and Bombay, the High Court at the Presidency town shall be deemed to be a Court of competent jurisdiction within the meaning of sections one hundred and eighty-seven and one hundred and ninety of the Indian Succession Act, 1865, wheresoever within the Presidency the property to be comprised in the probate or letters of administration may be situate.

Administrator General entitled to letters of administration, unless granted to next-of-kin.

15. Any letters of administration, or letters *ad colligenda bona,* hereafter to be granted by the High Court of Judicature at any Presidency town, shall be granted to the Administrator General of the Presidency, unless they are granted to the next-of-kin of the deceased.

Administrator General entitled in preference to creditor, non-universal legatee or friend.

The Administrator General of the Presidency shall be deemed by all the Courts in the Presidency to have a right to letters of administration in preference to that of any person merely on the ground of his being a creditor, a legatee other than an universal legatee, or a friend of the deceased.

When Administrator General is to administer estates of persons other than Hindús, &c.

16. If any person, not being a Hindú, Muhammadan or Buddhist, or a person exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act, shall have died, whether within any of the said Presidencies or not, and whether before or after the passing of this Act, and shall have left assets exceeding at the date of the death or within one year thereafter the value of one thousand rupees within any of the said Presidencies,

and if no person to whom the Court would have jurisdiction to commit administration of such assets has, within one month after his death, applied in such Presidency for probate of his will, or for any letters of administration of his estate,

the Administrator General of the Presidency in which such assets are, shall, within a reasonable time after he has had notice of the death of such person, and of his having left such assets as aforesaid, take such proceedings as may be necessary to obtain from the High Court at the Presidency town, letters of administration to the effects of such person, either generally or with a will annexed, as the case may require.

Whenever the Administrator General of the Presidency takes proceedings under this section, it shall be sufficient if the petition required by section two hundred and forty-six of the Indian Succession Act, 1865, states

(*a*) the time and place of the deceased's death to the best of the petitioner's knowledge or belief,

(*b*) that the deceased left some property within the Presidency as hereinbefore defined, and

(*c*) the amount or value of assets which are likely to come into the petitioner's hands.

Power to direct Administrator General to apply for administration.

17. Whenever any person, whether a Hindú, Muhammadan or Buddhist, or not, shall have died leaving assets within the local limits of the ordinary original civil jurisdiction of the High Court at the Presidency town, it shall be lawful for the Court,

upon the application of any person interested in such assets, or in the due administration thereof, either as a creditor, legatee, next-of-kin or otherwise, or

upon the application of a friend of any minor so interested, or

upon the application of the Administrator General,

if the applicant satisfies the Court that danger is to be apprehended of the misappropriation, deterioration or waste of such assets unless letters of administration of the effects of such person are granted,

to make an order, upon such terms as to indemnifying the Administrator General against costs and other expenses as the Court thinks fit, directing the Administrator General to apply for letters of administration of the effects of such person:

Administration to effects of Hindús, &c., when granted under this section.

Costs of unnecessary application.

Provided that, in the case of an application being made under this section for letters of administration to the effects of a deceased Hindú, Muhammadan or Buddhist, or person exempted as aforesaid, the Court may refuse to grant letters of administration to any person, if it be satisfied that such grant is unnecessary for the protection of the assets, and in such case the Court shall make such order as to the costs of the application as it thinks just.

Power to enjoin Administrator General to collect and hold assets until right of succession or administration is ascertained.

18. Whenever any person, whether a Hindú, Muhammadan or Buddhist, or not, shall have died, whether before or after the passing of this Act, leaving assets within the local limits of the ordinary original civil jurisdiction of any of the said High Courts, and such Court is satisfied that danger is to be apprehended of the misappropriation, deterioration or waste of such property, before it can be ascertained who may be legally entitled to the succession to such property, or whether the Administrator General is entitled to letters of administration to such deceased person,

the Court may authorize and enjoin the Administrator General to collect and take possession of such property, and to hold or deposit or invest the same according to the orders and directions of the Court, and in default of any such orders or directions, according to the provisions of this Act so far as the same are applicable to such property;

Rate of commission payable in such case.

and the Administrator General shall be entitled to a commission of one *per centum* upon the amount of all moveable assets collected or received by him in pursuance of such order, and also to reimburse himself for all payments made by him in respect of the assets which a private administrator of such assets might lawfully have made;

and in case letters of administration of any such property are afterwards granted to the Administrator General, the said commission of one *per centum* shall be deemed a part payment of the commission payable to the Administrator General under the letters of administration.

Any order of Court made under the provisions of this section, shall entitle the Administrator General to collect and to take possession of such property, and, if necessary, to maintain a suit for the recovery thereof.

Grant of probate to executor appearing in course of proceedings taken by Administrator General.

19. If in the course of proceedings to obtain letters of administration under the provisions of section sixteen or section seventeen,

any executor appointed by a will of the deceased appears according to the practice of the Court and proves the will and accepts the office of executor,

or if any person appears according to such practice and makes out his claim to letters of administration as next-of-kin of the deceased, and gives such security as is required of him by law or by the practice of the Court,

Costs of proceedings taken by Administrator General to be paid out of estate.

the Court shall grant probate of the will or letters of administration accordingly, and shall award to the Administrator General his costs of the proceedings so taken by him, to be paid out of the estate as part of the testamentary or intestate expenses thereof.

20. If no person appears according to the practice of the Court, and entitles himself to probate of a will, or to a grant of letters of administration as next-of-kin of the deceased,

or if the person who entitles himself to a grant of administration neglects to give such security as may be required of him by law or according to the practice of the Court,

the Court shall grant letters of administration to the Administrator General.

If no executor or next-of-kin appear or give necessary security, administration to be granted to Administrator General.

21. The Administrator General shall, when duly authorized or required so to do by the Military Secretary to Government, secure and distribute the assets of the estate and effects of any officer, soldier or other person subject to any Articles of War, in all cases in which such estate and effects do not exceed in the whole five hundred rupees, charging the estate with a commission of three *per centum* only.

Administrator General in certain cases to secure and distribute the effects of soldiers.

It shall not be necessary for the Administrator General to take out letters of administration in cases referred to in this section: but he shall have the same powers with regard to all such assets as he would have had if he had taken out such letters.

Proviso.

22. When the Administrator General applies for letters of administration to the effects of any officer, soldier or other person, subject to the Articles of War, the Court may grant to him letters of administration limited to the purpose of dealing with such effects in accordance with the provisions of the Regimental Debts Act, 1863, or any other law for the time being in force relating to the payment of regimental debts and the distribution of the effects of officers dying on service.

Power to grant Administrator General letters limited to purpose of dealing with assets in accordance with Regimental Debts Act.

23. Nothing in this Act is intended to preclude the Administrator General from applying to the Court for letters of administration in any case within the period of one month from the death of the deceased.

Administrator General not precluded from applying for letters within one month after death.

24. If any letters of administration granted to the Administrator General under the provisions of this Act, be revoked or recalled, the same shall, so far as regards the Administrator General and all persons acting under his authority in pursuance thereof, be deemed to have been only voidable; except as to any act done by any such Administrator General or other person as aforesaid, after notice of a will or of any other fact which would render such letters void:

After revocation, letters granted to Administrator General to be deemed as to him to have been voidable only. Exception.

Proviso.

Provided that no notice of a Will or of any other fact which would render any such letters void, shall affect the Administrator General or any person acting under his authority in pursuance of such letters, unless, within the period of one month from the time of giving such notice, proceedings be commenced to prove the will, or to cause the letters to be revoked, nor unless such proceedings be prosecuted without unreasonable delay.

Payments made by Administrator General prior to revocation.

25. If any letters of administration granted under this Act be revoked upon the production and proof of a will, all payments made or acts done by or under the authority of the Administrator General in pursuance of such letters of administration prior to the revocation thereof, which would have been valid under any letters of administration lawfully granted to him with such will annexed, shall be deemed valid notwithstanding such revocation.

Recall of Administrator General's administration, and grant of probate, &c., to executor or next-of-kin.

26. If an executor or next-of-kin of the deceased, who has not been personally served with a citation, or who has not had notice thereof in time to appear pursuant thereto, establish to the satisfaction of the Court a claim to probate of a will or to letters of administration in preference to the Administrator General, any letters of administration granted by virtue of this Act to the Administrator General may be re-called and revoked, and probate may be granted to such executor, or letters of administration granted to such other person as aforesaid:

Time within which application to revoke must be made.

Provided that no letters of administration granted to the Administrator General shall be revoked or re-called for the cause aforesaid, except in cases in which a will or codicil of the deceased is proved in the Presidency, unless the application for that purpose be made within six months after the grant to the Administrator General, and the Court be satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application is made.

Costs of obtaining administration, &c., may, on revocation, be ordered to be paid to Administrator General out of assets.

27. If any letters of administration granted to the Administrator General in pursuance of this Act be revoked, the Court may order the costs of obtaining such letters of administration, and the whole or any part of any commission which would otherwise have been payable under this Act, together with the costs of the Administrator General in any proceedings taken to obtain such revocation, to be paid to or retained by the Administrator General out of any assets belonging to the estate:

Provided that, in any such case, when the deceased has left a will appointing an executor, and probate of the will has been granted by any Court in the Presidency to such executor within three months after the death, or when the widow or next-of-kin has, within one month if resident within the

Presidency, or within three months if resident beyond the Presidency, obtained from any such Court letters of administration to the estate and effects of the deceased, then and in either of such cases the Administrator General shall (without prejudice to the provisions contained in sections seventeen and eighteen) not be entitled to receive or retain any commission out of any assets belonging to such estate and situate within the jurisdiction of the Court by which probate or administration has been granted as last aforesaid.

28. Whenever the Administrator General declares a dividend among such creditors of the deceased as have proved their debts, and notifies the payment of such dividend by advertisement in the official Gazette, no creditor of the deceased who has not previously to such declaration and advertisement proved his debt, shall be entitled to participate as such in the assets wherewith such dividend is made.

Exclusion of creditors who have not proved, from assets with which a dividend is made.

Any payment or delivery of assets to any legatee or to any person entitled in distribution, which is made by an Administrator General after the expiration of one year from the grant of the letters of administration under which such payment or delivery is made, shall be allowed to the Administrator General as against all creditors and other claimants against the estate, of whose debts or claims he has not had notice before making such payment or delivery:

Distribution of assets by Administrator General when allowed against claims of which he had no notice.

Provided that nothing herein contained shall exempt the person to whom such payment or delivery is made, from any liability to refund to which he would otherwise be liable:

Person receiving payments liable to refund.

Provided also, that no notice of any debt or claim shall affect the Administrator General, unless proceedings to enforce the debt or claim are commenced within one month after the giving of such notice, and are prosecuted without unreasonable delay.

What to be notice of debt or claim.

29. All letters of administration granted to any Administrator General in virtue of his office shall be granted to him by his name of office,

Letters to be granted to Administrator General by his name of office.

and all letters of administration heretofore granted to the Ecclesiastical Registrar or Administrator General officially, or granted to any Administrator General in virtue of his office, shall authorize the Administrator General for the time being of the same Presidency to act as administrator of the estate to which such letters relate.

Authority given by such letters.

30. Every probate granted to any Administrator General of a will wherein he is named as executor by virtue of his office, shall be granted to him by his name of office, and shall authorize the Administrator General for the time being of the same Presidency to act as executor of the estate to which such probate relates.

Grant of probate to Administrator General named as executor by virtue of his office.

Transfer by private executor or administrator of interest under probate or letters.

31. Any private executor or administrator, may, with the previous consent of the Administrator General of the Presidency in which the property comprised in the probate or letters of administration is situate, by an instrument in writing under his hand, bearing a stamp of ten rupees and notified in the local Gazette, transfer all estates, effects and interests vested in him by virtue of such probate or letters to the Administrator General by his name of office;

and thereupon the transferor shall be exempt from all liability as such executor or administrator, as the case may be, for any act or omission in respect of the said property after the date of the said transfer :

and the Administrator General for the time being shall have the rights and be subject to the liabilities which he would have had, and to which he would have been subject, if the probate or letters of administration, as the case may be, had been granted to him by his name of office at the date aforesaid.

Nothing herein contained shall be taken to exempt any such transferor from liability for acts and omissions in respect of the said property prior to the transfer.

Appointment of Official Trustee as trustee of assets carried to separate accounts.

32. Whenever the Administrator General carries over assets to separate accounts in his books, he shall notify the fact in the local official Gazette ; and he may, with the consent of the Official Trustee, and subject to such rules as the Governor General in Council may from time to time prescribe in this behalf, appoint the Official Trustee to be the trustee of such assets ; and upon such appointment such assets shall vest in the Official Trustee and his successors in office, and be held by him and them upon the same trusts as the same assets were held immediately before such appointment. And for the purposes of Act No. XVII of 1864 such assets shall be deemed to have been vested in the Official Trustee under section ten of that Act.

Vesting of estates, &c., in successor of Administrator General.

33. All estates, effects and interests which, at the time of the death, resignation or removal from office of any Administrator General, are vested in him by virtue of such letters of administration, probates or transfers as aforesaid, shall, upon every such death, resignation or removal, cease to be vested in him, and shall vest in his successor in office immediately upon his appointment thereto.

All books, papers and documents kept by such Administrator General by virtue of his office or as such executor or transferee as aforesaid, shall be transferred to and vested in his successor in office.

(b).—Suits by and against the Administrator General.

34. All suits and other proceedings commenced by or against any Administrator General in his representative character, may be brought by or against him by his name of office,

Administrator General to sue and be sued in his name of office.

and no suit or other proceeding heretofore or hereafter commenced by or against any person as Administrator General, either alone or jointly with any other person, shall abate by reason of the death, resignation or removal from office of any such Administrator General, but the same may, by order of the Court, and upon such terms as to the service of notices or otherwise as the Court may direct, be continued by or against his successor immediately upon his appointment, in the same manner as if no such death, resignation or removal had occurred :

Suit not to abate by death, &c.

Provided that nothing hereinbefore contained shall render any such successor personally liable for any costs incurred prior to the order for continuing the suit against him.

Proviso as to costs.

35. If any suit be brought by a creditor against any Administrator General in his representative character, the plaintiff shall be liable to pay the costs of the suit down to and including the decree, unless upon proof by affidavit or otherwise that not less than one month previous to the institution of the suit he had applied in writing to the Administrator General, stating the amount and other particulars of the claim, and supporting the same by such evidence as, under the circumstances of the case, the Administrator General was reasonably entitled to require, and that the Administrator General had refused or neglected to register the claim according to the practice of his office.

Creditors' suits against Administrator General.

If in any such suit judgment is pronounced in favour of the plaintiff, he shall, nevertheless, be only entitled to payment out of the assets of the deceased equally and rateably with the other creditors.

(c).—Grant of Certificates by the Administrator General.

36. Whenever any person, not being a Hindú, Muhammadan or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act, shall have died, whether within any of the said Presidencies or not, whether before or after the passing of this Act, and whether testate or intestate, and shall have left assets (whether moveable, or immoveable, or both) within any of the said Presidencies, and the Administrator General of such Presidency is satisfied

In what case Administrator General may grant certificate.

that such assets do not exceed in the whole one thousand rupees in value, he may, after the lapse of one month from the death if he thinks fit, or before the lapse of the said month, if he is requested so to do by writing under the hand of the executor or the widow or other person entitled to administer the effects of the deceased, grant to any person claiming otherwise than as a creditor to be entitled to a share of such assets, certificates under his hand entitling the claimant to receive the property therein mentioned, belonging to the estate of the deceased, to a value not exceeding in the whole one thousand rupees :

No certificate where probate granted or for money in Government Savings Bank.

Provided that no certificate shall be granted under this section where probate of the deceased's will or letters of administration of his effects has or have been granted, or in respect of any sum of money deposited in a Government Savings Bank.

Grant of certificate to creditors.

37. If in cases falling within section thirty-six, no person claiming otherwise than as a creditor to be entitled to a share of the effects of the deceased obtains, within three months, a certificate from the Administrator General under the same section, or letters of administration to the estate and effects of the deceased, the Administrator General may administer the estate and effects without letters of administration, in the same manner as if such letters had been granted to him ;

and if he neglect or refuse to take upon himself the administration of the estate and effects, he shall, upon the application of a creditor and upon being satisfied of his title, grant a certificate in the same manner as if such creditor were entitled to a share of the effects of the deceased,

and such certificate shall have the same effect as a certificate granted under the provisions of the same section, and shall be subject to all the provisions of this Act which are applicable to such certificate :

Proviso.

Provided that the Administrator General may, before granting such certificate, if he think fit, require the creditor to give reasonable security for the due administration of the estate and effects of the deceased.

Administrator General not bound to grant certificate unless satisfied of claimant's title, &c.

38. The Administrator General shall not be bound to grant any such certificate, unless he be satisfied of the title of the claimant and of the value of the assets of the deceased, either by the oath or affirmation of the claimant (which oath or affirmation the Administrator General is hereby authorized to administer or take), or by such other evidence as he requires.

Copy of certificate with receipt annexed, when

39. A copy of any such certificate with a receipt annexed shall, when such copy and receipt are signed by the person to whom the certificate has been granted, be a full discharge for payment or delivery to him of the money or

security for money therein mentioned, to the person paying or delivering the same:

signed by certificate-holder, to be a discharge.

but nothing in this Act shall preclude any executor or administrator of the deceased from recovering, from the person receiving the same, the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.

Right of executor or administrator against certificate-holder.

And any creditor or claimant against the estate of the deceased shall be at liberty to recover his debt or claim out of the assets received by such person and remaining in his hands unadministered, in the same manner and to the same extent as if such person had obtained letters of administration to the estate of the deceased.

Right of creditor against assets in hands of certificate-holder.

40. The Administrator General shall not be bound to take out letters of administration to the estate of any deceased person on account of the effects in respect of which he grants any such certificate, but he may do so if he discover any fraud or misrepresentation made to him, or that the value of the estate exceeded one thousand rupees.

Administrator General not bound to take out administration on account of effects for which he has granted certificate.

41. For every such certificate the Administrator General shall be entitled to charge a fee calculated after the rate of three rupees in the hundred on the amount mentioned in the certificate.

Fee for certificate.

(*d*).—*Expenses of the Administrator General's Establishment.*

42. The Administrator General shall defray all the expenses of the establishment necessary for his office, and all other charges to which the said office is subject, except those for which express provision is made by this Act.

Administrator General to defray expenses of establishment.

(*e*).—*Accounts and Schedules.*

43. The Administrator General of each of the said Presidencies shall enter into books to be kept by him for that purpose, separate and distinct accounts of each estate, and of all such sums of money, bonds and other securities for money, goods, effects and things as come to his hands, or to the hands of any person employed by him or in trust for him under this Act; and likewise of all payments made by him on account of such estate, and of all debts due by or to the same, specifying the dates of such receipts and payments respectively.

Administrator General to keep separate account for each estate.

Accounts to be open to inspection on payment of fee.

Such books shall be kept in the Administrator General's office, and shall be open for the inspection of all such persons, practitioners in the said Courts and others, as may have occasion to inspect the same, at office hours paying only such reasonable fee for the time being fixed by the Government and published in the official Gazette of the Presidency to which the same may relate.[a]

Administrator General to furnish half-yearly schedules.

44. The Administrator General of each of the said Presidencies shall twice in every year, that is to say, on or before the first day of April, and on or before the first day of October, or on such other days as the Government, by any rules or orders to be published as aforesaid, may direct, exhibit and deliver, in the High Court at Calcutta, Madras or Bombay, as the case may be,

(*a*) a schedule showing the gross amount of all sums of money received or paid by him on account of each estate in his charge, and the balances, during the period of six months ending severally on the thirty-first day of December and thirtieth day of June next before the day of delivering such schedule,

(*b*) a list of all bonds or other securities received on account of each of the said estates during the same period,

(*c*) a schedule of all administrations whereof the final balances have been paid over to the persons entitled to the same, during the same period, specifying the amount of such balances and the persons to whom paid.

Schedules to be filed and published.

Such schedules shall be filed of record in such High Court, and shall, within fourteen days afterwards, be published in the official Gazette of the Presidency by the Administrator General;

Copies of schedules.

and copies thereof in triplicate shall be delivered by such Administrator General to the Government, and shall be sent by such Government to the Secretary of State for India, in order that such Secretary may, if he think fit, order the same to be deposited at the India Office for public inspection, and cause notices to be published in the *London Gazette* and other leading newspapers, that such schedules are open to inspection there, or make such other orders respecting the same as he thinks fit.

PART IV.

Of the Audit of the Administrator General's Accounts.

Government to appoint auditors.

45. The Government shall from time to time appoint auditors to examine the accounts of the Administrator General at the times of the delivery of the said schedules, and also at any other time when the Government thinks fit.

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[a] See *Gazette of India*, 23rd March 1867, p. 566: *Bombay Government Gazette*, 19th December 1867, p. 476.

46. The auditors shall examine the schedules and accounts, and report to the Government—

Auditors to examine schedule, and report to Government.

(*a*) whether they contain a full and true account of everything which ought to be inserted therein,

(*b*) whether the books which by this Act, or by any such general rules and orders as hereinafter mentioned, are directed to be kept by the Administrator General, have been duly and regularly kept, and

(*c*) whether the assets and securities have been duly kept and invested and deposited in the manner prescribed by this Act, or by any such rules and orders to be made as aforesaid.

47. Every auditor shall have power to summon as well the Administrator General as any other person whose presence he thinks necessary, to attend him from time to time; and to examine the Administrator General or other person if he thinks fit, on oath or affirmation to be by him administered; and to call for all books, papers, vouchers and documents, which appear to him to be necessary for the purposes of the said reference.

Power to summon witnesses and to call for books, &c.

If the Administrator General or other person when summoned refuses, or, without reasonable cause, neglects to attend or to produce any book, paper, voucher or document so required, or attends and refuses to be sworn or make an affirmation, or refuses to be examined, the auditor shall certify such neglect or refusal in writing to the High Court at the Presidency town;

and every person so refusing or neglecting shall thereupon be punishable in like manner as if such refusal or neglect had been in contempt of the said High Court.

Penalty for non-attendance.

48. The costs and expenses of preparing and publishing the said schedules and copies thereof, and of every such reference and examination as aforesaid, shall be defrayed by all the estates to which such schedules or accounts relate.

Costs of preparing schedules, &c.

Such costs and expenses, and the portion thereof to be contributed by each of the said estates, shall be ascertained and settled by the auditors, subject to the approval of the Government, and shall be paid out of the said estates accordingly by the Administrator General.

49. If upon any such reference and examination the auditors see reason to believe that the said schedules do not contain a true and correct account of the matters therein contained or which ought to be therein contained, or that the assets have not been duly kept and invested or deposited in the manner directed by this Act, or by any such rules and orders as aforesaid, or that the Administrator General has failed to comply with the provisions and directions of this Act or of any such rules and orders, they shall report accordingly to the Government.

Special report to Government if accounts appear incorrect.

Proceedings upon such report.

50. The Government may refer every such report as last aforesaid to the consideration of the Advocate General for the Presidency, who shall thereupon, if he think fit, proceed summarily against the defaulter or his executor or administrator in the High Court in the Presidency town, by petition for an account, or to compel obedience to this Act or to such rules and orders as aforesaid, or otherwise as he may think fit, in respect of all or any of the estates then or formerly under the administration of such defaulter;

and the said Advocate General may exhibit interrogatories to the said Administrator General, executor or administrator (hereinafter called the defendant), who shall be bound to answer the same as fully as if a commission had been issued under the provisions of the Code of Civil Procedure for his examination upon the said interrogatories.

The Court shall have power upon any such petition to compel the attendance in Court of the defendant and any witnesses who may be thought necessary, and to examine them orally or otherwise as the said Court thinks fit, and to make and enforce such order or orders as the Court thinks just.

Costs of reference, &c., how defrayed.

51. The costs, including those of the Advocate General and of the reference to him, if the same be directed by the Court to be paid, shall be defrayed either by the defendant or out of the estates rateably as the said Court directs; and whenever any costs are recovered from the defendant, the same shall be repaid to the estates by which they have been in the first instance contributed, and the Court may, if it think fit, order the defendant to receive his costs out of the said estates.

PART V.

Of the Commission of the Administrator General.

Commission to be received by Administrators General.

52. The Administrator General of each of the said Presidencies, under any letters of administration granted to him in his official character, or under any probate granted to him of a will wherein he is named as executor by virtue of his office; or under any probates or letters of administration vested in him by section eight or section thirty-one, shall be entitled to receive a commission at the following rates respectively, namely:—

The Administrator General of Bengal at the rate of three *per centum*, and the Administrators General of Madras and Bombay respectively at the rate of five *per centum*, upon the amount or value of the assets which they respectively collect and distribute in due course of administration.

Section 52 not to apply to property of

53. The last preceding section shall not apply to cases in which the property of an officer or soldier dying on service comes to the hands of the Admin-

istrator General of any of the said Presidencies, under the ninth or the twelfth section of the Statute called "The Regimental Debts' Act, 1863;"

officers and soldiers dying on service.

and such Administrator General shall not take a percentage on any such property exceeding three *per centum* on the gross amount coming to his hands after the passing of the Administrator General's Act, 1865, if preferential charges as defined by the fourth section of the said Statute have been previously paid, or on the gross amount remaining in his hands after payment by him of such charges, as the case may be.

Commission on such property.

54. The Administrator General shall be entitled to reimburse himself for any payments made by him in respect of any estate in his charge, which a private administrator of such estate might have lawfully made; but save as aforesaid, the commission to which the Administrator General of each of the said three Presidencies shall be entitled is intended to cover, not merely the expense and trouble of collecting the assets, but also his trouble and responsibility in distributing them in due course of administration.

What expenses, &c., commission is to cover.

It is therefore enacted that one-half of such commission shall be payable to and retained by such Administrator General upon the collection of the assets, and the other half thereof shall be payable to the Administrator General who distributes any assets in the due course of administration, and may be retained by him upon such distribution.

How payable.

The amount of the commission lawfully retained by an Administrator General upon the distribution of assets, shall be deemed a distribution in the due course of administration within the meaning of this Act.

Commission retained to be deemed a distribution.

Explanation : The carrying of assets to separate accounts in the books of the Administrator General notified as hereinbefore provided, and the transfer of assets to the Official Trustee, shall each be deemed to be a distribution within the meaning of this section.

55. The Governor General in Council may from time to time order the rate of commission hereinbefore authorized to be received by the Administrator General of Bengal to be raised to any rate not exceeding five *per centum* upon the amount or value of the assets which he collects and distributes in due course of administration and again to be reduced.

Commission of Administrator General of Bengal may be raised and again reduced.

The Governments of the Presidencies of Fort St. George and Bombay respectively may, with the sanction of the Governor General in Council, from time to time order the aforesaid rate of commission hereby authorized to be received by the Administrators General of Madras and Bombay respectively to be reduced and again to be raised:

Commission of Administrators General of Madras and Bombay may be reduced and again raised.

Provided that the commission so to be received shall not at any time exceed five *per centum* of the assets collected, and that no person now holding

Proviso.

the office of Administrator General of Bengal, Madras or Bombay shall, by any such order, be deprived of the right to receive and retain, for his own use, a commission at the rate of three *per centum* in respect of all assets collected and actually administered by him.

Commission not to be charged by executor or administrator other than Administrator General.

56. No person other than the Administrator General acting officially shall receive or retain any commission or agency charges for anything done as executor or administrator under any probate or letters of administration, or letters *ad colligenda bona,* which have been granted by the Supreme Court or High Court at Fort William in Bengal since the passing of Act No. VII of 1849 (*for the appointment of an Administrator General in Bengal*), or by either of the Supreme or High Courts at Madras and Bombay since the passing of Act No. II of 1850 (*to amend and extend to Madras and Bombay Act No. VII of* 1849), or which have been or shall be granted by any Court of competent jurisdiction within the meaning of sections one hundred and eighty-seven and one hundred and ninety of the Indian Succession Act, 1865;

Bequest in favour of executors not affected.

but this enactment shall not prevent any executor or other person from having the benefit of any legacy bequeathed to him in his character of executor, or by way of commission or otherwise.

PART VI.

MISCELLANEOUS.

Power to make rules.

57. The Government may from time to time make rules consistent with the provisions of this Act,

For custody of assets.

(*a*) for the safe custody of the assets and securities which come to the hands or possession of the Administrator General,

For remittance of money

(*b*) for the remittance to the India Office of all sums of money payable or belonging to persons resident in Europe, or, in other cases where such remittances are required,

For guidance of Administrator General.

(*c*) generally for the guidance of the Administrator General in the discharge of his duties;

and may by such rules amongst other things direct what books, accounts and statements, in addition to those mentioned in this Act, shall be kept by the Administrator General, and in what form the same shall be kept, and what entries the same shall contain, and where the same shall be kept, and where and how the assets and securities belonging to the estates to be administered by such Administrator General shall be kept and invested or deposited pend-

ing the administration thereof, and how and at what rate or rates of exchange any remittances thereof shall be made.

Unless any such rules are made and published, the rules now in force in each of the said Presidencies, so far as the same are not inconsistent with this Act, shall be of the same force and effect as if the same had been made and published hereunder.

Proviso as to rules now in force.

58. Such rules shall be published in the *Gazette of India,* the *Fort St. George Gazette,* or the *Bombay Government Gazette,* as the case may be, and the several Administrators General shall obey and fulfil the same, and the same shall be a full authority and indemnity for all persons acting in pursuance thereof.

Publication of new rules.

59. The Governor General in Council may from time to time, either by general rule, or by special order in a particular case, decide any question as to the time at which any commission accruing to the Administrator General in his official capacity shall be deemed to have been payable; and such decision shall bind every Administrator General and the estates held by him in his official capacity.

Power to decide when commission shall be deemed payable.

60. Any order made under this Act by any Court shall have the same effect and be executed in the same manner as a decree.

Orders of Court to be equivalent to decrees.

61. Whoever, having been sworn or having taken an affirmation under this Act, makes upon any examination authorized by this Act, a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

False evidence.

62. All assets in the official charge of the Administrator General of any of the said Presidencies, and appearing from the official books and accounts of the Ecclesiastical Registrar and of the Administrator General of any of those Presidencies, or from the official books and accounts of any of those officers, to have been in official custody for a period of fifteen years or upwards without any claim thereto having been made and allowed, shall be transferred and paid to the Comptroller General of Accounts or to the Accountant General to the Government of Fort St. George or Bombay, as the case may be, and be carried to the account and credit of the Government of India for the general purposes of government;

Assets unclaimed for fifteen years to be transferred to Government.

and the receipt of the said Comptroller General or Accountant General, as the case may be, shall be a full indemnity and discharge to the said Administrator General for any such transfer or payment:

Proviso.

Provided that this Act shall not authorize the transfer or payment of any such proceeds as aforesaid, pending any suit heretofore or hereafter instituted in respect thereof.

Mode of proceeding by claimant to recover principal money so transferred.

63. If any claim be hereafter made to any part of the securities, monies or proceeds carried to the account and credit of the Government of India under the provisions of this Act, and if such claim be established to the satisfaction of the Comptroller General or the Accountant General to the Government of Fort St. George or Bombay, as the case may be, the Government of India shall pay to the claimant the amount of the principal so carried to its account and credit or so much thereof as appears to be due to the claimant.

If the claim be not established to the satisfaction of the said Comptroller General or Accountant General, as the case may be, the claimant may apply by petition to the High Court at the Presidency town against the Secretary of State for India, and after taking evidence either orally or on affidavit in a summary way as the Court thinks fit, the Court shall make such order on the petition for the payment of such portion of the said principal sum as justice requires, and such order shall be binding on all parties to the suit,

and the Court may direct by whom the whole or any part of the costs of each party shall be paid.

District Judge in certain cases to take charge of property of deceased persons, and to report to Administrator General.

64. Whenever any person, other than a Hindú, Muhammadan or Buddhist or a person exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act, dies leaving assets within the limits of the jurisdiction of a District Judge, the District Judge shall report the circumstance without delay to the Administrator General of the Presidency, stating the following particulars so far as they may be known to him :—

(*a*) the amount and nature of the assets,

(*b*) whether or not the deceased left a will, and, if so, in whose custody it is,

and, on the lapse of one month from the date of the death,

(*c*) whether or not any one has applied for probate of the will of the deceased or letters of administration to his effects.

The District Judge shall retain the property under his charge, or appoint an officer under the provisions of the Indian Succession Act, 1865, section two hundred and thirty-nine, to take and keep possession of the same until the Administrator General has obtained letters of administration, or until some other person has obtained such letters or a certificate from the Administrator General under the provisions of this Act, when the property shall be delivered over to the person obtaining such letters of administration or certificate, or, in

the event of a will being discovered, to the person who may obtain probate of the will.

65. Nothing in this Act is intended to require the Administrator General to take proceedings to obtain letters of administration to the estate or effects of any officer or soldier or other person subject to any Articles of War, unless when the Administrator General is duly authorized or required so to do by the Military Secretary to Government, or by a Committee of Adjustment or other officers or persons acting under any law for the time being in force relating to the payment of regimental debts;

Act not to require administration of estates of soldiers, unless Administrator General authorized by Military Secretary or Committee of Adjustment.

nor is anything in this Act contained intended to interfere with or alter the provisions of any Act of Parliament for regulating the payment of regimental debts, and the distribution of the effects of officers and soldiers dying in the service of Her Majesty in India, or of any Articles of War.

66. Nothing contained in the Indian Succession Act, 1865, or the Indian Companies' Act, 1866, shall be taken to supersede or affect the rights, duties and privileges of the Administrators General and officiating Administrators General of Bengal, Madras and Bombay respectively.

Acts X of 1865 and X of 1866 not to affect Administrator General.

And nothing contained in the Indian Succession Act, 1865, or in this Act, or in the said Act No. XXIV of 1867, shall be deemed to affect, or to have affected, any provisions for the time being in force relating to the moveable property under two hundred rupees in value of persons dying intestate within any of the Presidency Towns, which shall be or has been taken charge of by the Police for the purpose of safe custody. [a]

Saving of provisions of Presidency Police Acts as to petty estates.

ACT No. III OF 1874.

Received the Governor General's assent on the 24th February 1874.

An Act to explain and amend the law relating to certain Married Women, and for other purposes.

WHEREAS it is expedient to make such provision as hereinafter appears for the enjoyment of wages and earnings by women married before the first day of January 1866, and for insurances on lives by persons married before or after that day:

Preamble.

And whereas by the Indian Succession Act, 1865, section four, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done, if unmarried:

[a] See Bengal Act No. IV of 1866, ss. 100, 101: Madras Act No. VIII of 1867, ss. 76, 77, and (in Bombay) Act No. XIII of 1856, ss. 113, 114.

And whereas by force of the said Act all women to whose marriages it applies are absolute owners of all property vested in, or acquired by, them, and their husbands do not by their marriage acquire any interest in such property, but the said Act does not protect such husbands from liabilities on account of the debts of their wives contracted before marriage, and does not expressly provide for the enforcement of claims by or against such wives;

It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called "The Married Women's Property Act, 1874:"

Extent and application.

2. It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty.

But nothing herein contained applies to any married woman who at the time of her marriage professed the Hindú, Muhammadan, Buddhist, Síkh or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions.

And the Governor General in Council may from time to time, by order, either retrospectively from the passing of this Act or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect or tribe, or part of a race, sect or tribe, to whom he may consider it impossible or inexpedient to apply such provisions.

The Governor General in Council may also revoke any such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations under this section shall be published in the *Gazette of India.*

The fourth section of the said Indian Succession Act shall not apply, and shall be deemed never to have applied, to any marriage one or both of the parties to which professed at the time of the marriage, the Hindú, Muhammadan, Buddhist, Síkh or Jaina religion.

3. [*Repealed by Act No. XII of* 1876.]

II.—Married Women's wages and earnings.

Married women's earnings to be their separate property.

4. The wages and earnings of any married woman acquired or gained by her after the passing of this Act, in any employment, occupation or trade carried on by her and not by her husband,

and also any money or other property so acquired by her through the exercise of any literary, artistic or scientific skill,

and all savings from and investments of such wages, earnings and property,

shall be deemed to be her separate property, and her receipts alone shall be good discharges for such wages, earnings and property.[a]

III.—Insurances by Wives and Husbands.

Married woman may effect policy of insurance.

5. Any married woman may effect a policy of insurance on her own behalf and independently of her husband; and the same and all benefit thereof, if expressed on the face of it to be so effected, shall enure as her separate property, and the contract evidenced by such policy shall be as valid as if made with an unmarried woman.[b]

Insurance by husband for benefit of wife.

6. A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.

When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the Presidency in which the office at which the insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court, under Act No. XVII of 1864 (*to constitute an Office of Official Trustee*), section ten.[c]

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors.

IV.—Legal Proceedings by and against Married Women.

Married women may take legal proceedings.

7. A married woman may maintain a suit in her own name for the recovery of property of any description which, by force of the said Indian Succession Act, 1865, or of this Act, is her separate property; and she shall have, in her own name, the same remedies, both civil and criminal, against all persons, for the protection and security of such property, as if she were unmarried, and she shall be liable to such suits, processes and orders in respect of such property as she would be liable to if she were unmarried.[d]

Wife's liability for

8. If a married woman (whether married before or after the first day of January 1866) possesses separate property, and if any person enters into

[a] See 33 & 34 Vic., c. 1. [b] *ibid.* s. 10, para. 1. [c] *ibid.* s. 10, para. 2. [d] *ibid.* s. 11.

postnuptial debts.

a contract with her with reference to such property, or on the faith that her obligation arising out of such contract will be satisfied out of her separate property, such person shall be entitled to sue her, and, to the extent of her separate property, to recover against her whatever he might have recovered in such suit had she been unmarried at the date of the contract and continued unmarried at the execution of the decree: [a]

Provided that nothing herein contained shall affect the liability of a husband for debts contracted by his wife's agency, express or implied, or render a married woman liable to arrest or to imprisonment in execution of a decree.

V.—Husband's liability for Wife's debts.

Husband not liable for wife's antenuptial debts.

9. A husband married after the thirty-first day of December 1865, shall not by reason only of such marriage be liable to the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and shall, to the extent of her separate property, be liable to satisfy such debts as if she had continued unmarried: [b]

Proviso.

Provided that nothing contained in this section shall affect any suit instituted before the passing of this Act, nor invalidate any contract into which a husband may, before the passing of this Act, have entered in consideration of his wife's antenuptial debts.

ACT No. IV of 1874.

Received the Governor General's assent on the 24th February 1874.

An Act to control recruiting in British India for the service of Foreign States.[c]

Preamble.

Whereas it is expedient that the Governor General in Council should exercise full control over recruiting in British India for the service of Foreign States; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Foreign Recruiting Act, 1874:"

Local extent.

It extends to the whole of British India.

2. In this Act—

"Foreign State" defined.

"Foreign State" includes any person or persons exercising or assuming to exercise the powers of Government in or over any country, colony, province, or people beyond the limits of British India.

Power to prohibit or permit recruiting.

3. If any person is, within the limits of British India, obtaining or attempting to obtain recruits for the service of any Foreign State in any capacity, the Governor General in Council may, by order in writing signed

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[a] *Archer* v. *Watkins*, 8 Beng. 372. [b] 33 & 34 Vic., c. 93, s. 12.

[c] The Foreign Enlistment Act, 33 & 34 Vic., c. 90, applies only when the recruiting is for the service of any foreign State *at war* with any foreign State at peace with Her Majesty.

by a Secretary to the Government of India, either prohibit such person from so doing, or permit him to do so subject to any conditions which the Governor General in Council thinks fit to impose.

Power to impose conditions.

4. The Governor General in Council may from time to time, by general order notified in the *Gazette of India*, either prohibit recruiting for the service of any Foreign State, or impose upon such recruiting any conditions which he thinks fit.

Power to rescind or vary orders.

5. The Governor General in Council may rescind or vary any order made under this Act in such manner as he thinks fit.

Offences.

6. Whoever, in violation of the prohibition of the Governor General in Council, or of any condition subject to which permission to recruit may have been accorded,

(*a*) induces or attempts to induce any person to accept or agree to accept or to proceed to any place with a view to obtaining any commission or employment in the service of any Foreign State, or

(*b*) knowingly aids in the engagement of any person so induced, by forwarding or conveying him or by advancing money or in any other way whatever,

shall be liable to imprisonment for a term which may extend to seven years, or to fine to such amount as the Court thinks fit, or to both.

Place of trial.

7. Any offence against this Act may be enquired into and tried, as well in any district in which the person accused may be found, as in any district in which it might be enquired into and tried under the provisions of the Code of Criminal Procedure.

THE PRIVY COUNCIL APPEALS ACT, 1874.

CONTENTS.

PREAMBLE.

I.—PRELIMINARY.

SECTIONS.

1. Short title.
   Extent.
   Commencement.
2. [*Repealed.*]
3. 'Decree' defined.

II.—ADMISSION OF APPEALS.

4. When appeals lie to Queen in Council.
5. Value of subject-matter.

SECTIONS.

6. Bar of certain appeals.
7. Application to Court whose decree is complained of.
8. Time within which application must be made.
9. Certificate as to value or fitness.
10. Refusal of certificate.
11. Security and deposit required on grant of certificate.
12. Admission of appeal and procedure thereon.
13. Revocation of acceptance of security.
14. Power to order further security or payment.
15. Failure to comply with order.
16. Refund of balance of deposit.

III.—PROCEEDINGS PENDING APPEALS.

17. Powers of Court pending appeal.
18. Increase of security found inadequate.

IV.—EXECUTION OF ORDERS OF HER MAJESTY IN COUNCIL.

19. Procedure to enforce orders of Queen in Council.
20. Appeal against order relating to execution.
21. Amendment of Act IX of 1871, schedule II, No. 169.

V.—MISCELLANEOUS.

22. Power to make rules.
Publication of rules.
Rules heretofore made.
23. Recorder of Rangoon.
24. Construction of Bengal Regulation III of 1828, section 4, clause 5.
25. Saving of Her Majesty's pleasure,
and of rules for conduct of business before Judicial Committee.

ACT No. VI OF 1874.

Received the Governor General's assent on the 24th March 1874.

An Act to consolidate and amend the law relating to appeals to the Privy Council from decrees of the Civil Courts.

Preamble.

WHEREAS it is expedient to consolidate and amend the law regulating the admission of appeals to Her Majesty in Council from certain judgments, decrees and orders of the Civil Courts; It is hereby enacted as follows:—

I.—PRELIMINARY.

Short title.

1. This Act may be called "The Privy Council Appeals Act, 1874:"

It extends to the whole of British India; but it does not apply to any matter of criminal, or admiralty, or vice-admiralty, jurisdiction: nor to appeals from orders and decrees of Prize-courts; Extent.

And it shall come into force on the passing thereof. Commencement.

2. [*Repealed by Act No. XVI of* 1874.]

3. In this Act, unless there be something repugnant in the subject or context, the expression "decree" includes also judgment and order. 'Decree' defined.

II.—Admission of Appeals.

4. Subject to such rules as may, from time to time, be made by Her Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained— When appeals lie to Queen in Council.

an appeal shall lie to Her Majesty in Council,

(*a*) from any final decree passed on appeal by a High Court or other Court of final appellate jurisdiction,

(*b*) from any final decree passed by a High Court in the exercise of original civil jurisdiction, and

(*c*) from any decree, when the case, as hereinafter provided, is certified to be a fit one for appeal to Her Majesty in Council.

5. In each or the cases mentioned in clauses (*a*) and (*b*) of section four, Value of subject-matter.

the amount of value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the matter in dispute on appeal to Her Majesty in Council must be the same sum or upwards,

or the decree must involve, directly or indirectly, some claim or question to, or respecting, property of like amount or value,

and where the decree appealed from affirms the decision of the Court immediately below the Court passing such decree, the appeal must involve some substantial question of law.

6. Notwithstanding anything contained in section four,— Bar of certain appeals.

no appeal shall lie to Her Majesty in Council from the judgment of one Judge of a High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four, or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the High Court at the time being;

and no appeal shall lie to Her Majesty in Council from any decree which, under Act No. XXIII of 1861, section twenty-seven, is final.

Application to Court whose decree is complained of.

7. Whoever desires to appeal under this Act to Her Majesty in Council must apply by petition to the Court whose decree is complained of.

Time within which application must be made.

8. Such application must ordinarily be made within six months from the date of such decree.

But if that period expires when the Court is closed, the application may be made on the day that the Court re-opens.

Certificate as to value or fitness.

9. Every petition under section seven must state the grounds of appeal, and pray for a certificate, either that as regards amount or value and nature, the case fulfils the requirements of section five, or that it is otherwise a fit one for appeal to Her Majesty in Council.

Upon receipt of such petition, the Court may direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

Refusal of certificate.

10. If such certificate be refused, the petition shall be dismissed :

Provided that, if the decree complained of be a final decree passed by a Court other than a High Court, the order refusing the certificate shall be appealable within thirty days from the date of the order, to the High Court to which the former Court is subordinate.

Security and deposit required on grant of certificate.

11. If the certificate be granted, the applicant shall, within six months from the date of the decree complained of, or within six weeks from the grant of the certificate, whichever is the later date,[a]

(*a*) give security for the costs of the respondent,[b] and

(*b*) deposit the amount required to defray the expense of translating, transcribing, indexing, and transmitting to Her Majesty in Council a correct copy of the whole record of the suit, except

(1) formal documents directed to be excluded by any order of Her Majesty in Council in force for the time being ;

(2) papers which the parties agree to exclude ;

(3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included ; and

(4) such other documents as the High Court may direct to be excluded ;

and when the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also, within the time mentioned in the first clause of this section, deposit the amount required to defray the expense of printing such copy.

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[a] The Court has no power to enlarge this time, 23 Suth., Civil Rulings, 220.

[b] See Rule of Bombay High Court, *Bombay Govt. Gazette*, 2nd September 1874, pp. 732, 781.

12. When such security has been completed and deposit made to the satisfaction of the Court, the Court may

Admission of appeal and procedure thereon.

(*a*) declare the appeal admitted, and

(*b*) give notice thereof to the respondent,

and shall then

(*c*) transmit to Her Majesty in Council, under the seal of the Court, a correct copy of the said record, except as aforesaid, and

(*d*) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

13. At any time before the admission of the appeal, the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

Revocation of acceptance of security.

14. If at any time after the admission of the appeal, but before the transmission of the copy of the record, except as aforesaid, to Her Majesty in Council, such security appears inadequate,

Power to order further security or payment.

or further payment is required for the purpose of translating, transcribing, printing, indexing, or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

15. If the appellant fail to comply with such order, the proceedings shall be stayed,[a]

Failure to comply with order.

and the appeal shall not proceed without an order in this behalf of Her Majesty in Council,

and in the meantime execution of the decree appealed against shall not be stayed.

16. When the copy of the record, except as aforesaid, has been transmitted to Her Majesty in Council, the appellant may obtain a refund of the balance, if any, of the amount which he has deposited under section eleven.

Refund of balance of deposit.

III.—Proceedings pending Appeals.

17. Notwithstanding the admission of any appeal under this Act, the decree appealed against shall be unconditionally enforced, unless the Court admitting the appeal otherwise directs.

Powers of Court pending appeal.

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[a] So where no security at all has been deposited within the time limited by sec. 11 *supra*, I. L. R., 1 Calc. 142.

But the Court may, if it think fit, on any special cause shown by any party interested in the suit, or otherwise appearing to the Court—

(*a*) impound any moveable property in dispute, or any part thereof, or

(*b*) allow the decree appealed against to be enforced, taking such security from the respondent as the Court thinks fit for the due performance of any order which Her Majesty in Council may make on the appeal, or

(*c*) stay the execution of the decree appealed against, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed against, or of any order which Her Majesty in Council may make on the appeal, or

(*d*) place any party seeking the assistance of the Court under such conditions, or give such other direction respecting the subject-matter of the appeal, as it thinks fit.

Increase of security found inadequate.

18. If at any time during the pendency of the appeal the security so furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

In default of such further security being furnished as required by the Court, if the original security was furnished by the appellant, the Court may, on the application of the respondent, issue execution of the decree appealed against as if the appellant had furnished no such security,

and if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay all further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

IV.—Execution of Orders of Her Majesty in Council.

Procedure to enforce orders of Queen in Council.

19. Whoever desires to enforce or to obtain execution of any order of Her Majesty in Council shall apply by petition, accompanied by a certified copy of the decree or order made in appeal and sought to be enforced or executed, to the Court from which the appeal to Her Majesty was preferred.[a]

Such Court shall transmit the order of Her Majesty to the Court which made the first decree appealed from, or to such other Court as Her Majesty by her said order may direct, and shall (upon the application of either party) give such directions as may be required for the enforcement or execution of the same; and the Court to which the said order is so transmitted shall enforce or execute it accordingly, in the manner and according to the rules applicable to the execution of its original decrees.

[a] 22 Suth., C. R. 102.

20. The orders made by the Court which enforces or executes the order of Her Majesty in Council relating to such enforcement or execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the enforcement or execution of its own decrees.

Appeal against order relating to execution.

21. To the first column of No. 169 of the second schedule annexed to the Indian Limitation Act, 1871, the following words shall be added (that is to say), "or any order of Her Majesty in Council."

Amendment of Act IX of 1871, schedule II, No. 169.

V.—Miscellaneous.

22. The High Court may, from time to time, make general rules consistent with this Act to regulate—

Power to make rules.

(*a*) the service of notices under section nine,

(*b*) the grant or refusal of certificates, under sections ten and eleven, by Courts of final appellate jurisdiction subordinate to the High Court,

(*c*) the amount and nature of the security required under sections eleven, fourteen and eighteen,

(*d*) the testing of such security,

(*e*) the estimate of the cost of transcribing the record,

(*f*) the preparation, examination and certifying of such transcript,

(*g*) the revision and authentication of translations,

(*h*) the preparation of indices to transcripts of records, and of lists of the papers not included therein,

and all other matters connected with the enforcement of this Act.

All such rules shall be published in the local official Gazette,[a] and shall thereupon have the force of law in the High Court, and the Courts of final appellate jurisdiction subordinate thereto.

Publication of rules.

All rules heretofore made and published by any High Court relating to appeals to Her Majesty in Council and in force immediately before the passing of this Act, shall, so far as they are consistent with this Act, be deemed to have been made and published hereunder.

Rules heretofore made.

23. In sections four and twenty-two, the expression 'High Court' shall be deemed to include also the Recorder of Rangoon, but not so as to empower him to make rules binding on Courts other than his own Court.

Recorder of Rangoon.

24. The rules and restrictions referred to in Bengal Regulation III of 1828, section four, clause five, shall be deemed to be the rules and restrictions applicable to appeals under this Act from the decisions of the High Court of Judicature at Fort William in Bengal.

Construction of Bengal Regulation III of 1828, section 4, clause 5.

[a] See *Oudh Gazette*, 11th July 1874, Part II, p. 14: *Panjáb Gazette*, 28th January 1875 Part III, p. 42.

Saving of Her Majesty's pleasure, and of rules for conduct of business before Judicial Committee.

25. Nothing herein contained shall be understood—

(a) to bar the full and unqualified exercise of Her Majesty's pleasure in receiving or rejecting appeals to Her Majesty in Council, or otherwise howsoever, or

(b) to interfere with any rules made by the Judicial Committee of the Privy Council and for the time being in force for the presentation of appeals to Her Majesty in Council, or their conduct before the said Judicial Committee.

THE EUROPEAN VAGRANCY ACT, 1874.

CONTENTS.

PREAMBLE.

PART I.—PRELIMINARY.

SECTIONS.

1. Short title.
   Local extent.
   Commencement.
2. Repeal of Acts.
3. Interpretation-clause.

PART II.—PROCEDURE.

4. Power to require apparent vagrant to go before Magistrate.
5. Summary inquiry into vagrant's circumstances.
   Declaration of vagrancy.
   Order to go to work-house.
6. Forwarding vagrant to place of employment.
7. Assistance to obtain employment.
8. Subsistence allowance.
9. Power to give certificates.
   Form of certificate.
10. Power to invest certain officials with jurisdiction of Justices under sections 5, 7, 8 and 9.

PART III.—GOVERNMENT WORK-HOUSES.

11. Provision of Government work-houses.
    Scale of diet.
12. Superintendence of work-houses.
13. Search of vagrants.
14. Discipline.
15. Refusal to accept employment.

PART IV.—Removal from India.

Sections.

16. Removal of vagrants.
Cost of removal.
17. Agreements with vagrants.
Form of agreement
18. Power to perform agreement.

PART V.—Penalties.

19. Refusal to go before Magistrate.
Assaulting Police.
20. Escaping from Police.
Quitting work-house without leave.
Failing to return to work-house.
21. Failing to proceed to port of embarkation.
Refusing to go on boardship.
Escaping from ship.
22. Returning to India.
23. Begging.
24. Procedure on close of imprisonment.
25. Penalty on shipmaster bringing European convicts to India.
Power to exempt certain shipmasters.
26. Recovery of fines.
Payment of fines.
27. Prosecutions.
28. Limits of jurisdiction.
29. Validity of proceedings where Magistrate is not the nearest.

PART VI.—Miscellaneous.

30. Deprivation of privileges of European British subjects under Criminal Procedure Code.
31. Liability of importers of Europeans or employers of soldiers becoming vagrants.
Recovery of charges.
32. Liability of consignee in case of Europeans who arrive in charge of animals and become vagrants.
"Consignee" defined.
"Agent" defined.
33. Evidence of declaration under section 5.
34. Exercise of powers conferred on Local Government.
35. Exercise in Native States of powers conferred on Magistrates, Justices and Police.

SECTIONS.

36. Power to make rules for guidance of officers.

THE FIRST SCHEDULE (form of Certificate).

THE SECOND SCHEDULE (form of Agreement).

ACT No. IX OF 1874.

Received the Governor General's assent on the 7th April 1874.

An Act to consolidate and amend the Law relating to European Vagrancy.

Preamble

WHEREAS it is expedient to consolidate and amend the laws relating to persons of European extraction who wander in a destitute condition throughout India: It is hereby enacted as follows:—

PART I.—PRELIMINARY.

Short title.

1. This Act may be called "The European Vagrancy Act, 1874:"

Local extent.

It extends to the whole of British India and to the dominions of Princes and States in India in alliance with Her Majesty;

Commencement.

And it shall come into force at once: Provided that sections four to sixteen (both inclusive), nineteen, twenty, twenty-four and twenty-nine shall not come into force in Coorg, or in the Andaman and Nicobar Islands, or in any of the dominions of the Princes and States in India in alliance with Her Majesty not situate within the limits of any Presidency, Lieutenant-Governorship or Chief Commissionership in British India, until such day or respective days as the Governor General in Council from time to time, by notification in the *Gazette of India*, appoints in this behalf.

Repeal of Acts.

2. Acts No. XXI of 1869 (*to provide against European Vagrancy*) and No. XXVIII of 1871 (*to amend the European Vagrancy Act*, 1869) are hereby repealed.

But all appointments and orders made, work-houses provided, certificates given, powers conferred, rules prescribed and exemptions granted under the former Act, shall be deemed to have been respectively made, provided, given, conferred, prescribed and granted under this Act.

Interpretation-clause.

3. In this Act—

"Person of European extraction."

"Person of European extraction" includes—

(*a*) persons born in Europe, America, the West Indies, Australia, Tasmania, New Zealand, Natal, or the Cape Colony,

(*b*) the sons and grandsons of such persons,

but does not include persons commonly called Eurasians or East Indians:

"Vagrant" means a person of European extraction found asking for alms, or wandering about without any employment or visible means of subsistence: "Vagrant."

"Master of a ship" includes any person in charge of a decked vessel: "Master of a ship."

And in Parts III and V of this Act "Magistrate" means, within the limits of the towns of Calcutta, Madras and Bombay, a Magistrate of Police, and, outside those limits, a person exercising powers under the Code of Criminal Procedure not less than those of a Magistrate of the second class. "Magistrate."

PART II.—Procedure.

4. Any Police officer may, within the limits of the towns of Calcutta, Madras and Bombay, require any person who is apparently a vagrant to accompany him or any other Police officer to, and to appear before, the nearest Magistrate of Police, and may, without those limits, require any such person to accompany him or any other Police officer to, and to appear before, the nearest Justice of the Peace exercising the powers of a Magistrate of the first class under the Code of Criminal Procedure. Power to require apparent vagrant to go before Magistrate.

5. The Magistrate of Police or Justice shall in such case, or in any other case where a person apparently a vagrant comes before him, make a summary inquiry into the circumstances and character of the apparent vagrant; and if he is satisfied that such person is a vagrant, he shall record in his office a declaration to that effect. Summary inquiry into vagrant's circumstances. Declaration of vagrancy.

If he is further of opinion that the vagrant is not likely to obtain employment at once, or if he has reason to believe that a declaration of vagrancy has on any former occasion been recorded in respect of such vagrant, he shall require the vagrant to go to a Government work-house, and shall draw up an order to that effect. Order to go to work-house.

The vagrant shall then be placed in charge of the Police for the purpose of being forwarded to the work-house, and the said order shall be a sufficient authority to the Police for retaining him in their charge while he is on his way to the work-house, and to the Governor of the work-house for receiving and detaining such vagrant.

6. Where the officer making the inquiry mentioned in section five is of opinion that the vagrant is likely to obtain employment in any place subject to the Local Government, or (when the vagrant is in any part of the dominions mentioned in section one) in any place subject to any adjacent Local Forwarding vagrant to place of employment.

Government, such officer may in his discretion forward the vagrant to such place in charge of the Police, and draw up an order to that effect.

Such order shall be a sufficient authority to the Police for retaining the vagrant in their charge while he is on his way to such place of employment.

Assistance to obtain employment.

7. Upon his arrival at the place of employment, the vagrant shall be taken before the nearest Magistrate of Police or Justice of the Peace exercising powers as aforesaid, to whom the order for transmission shall be delivered.

Such officer shall thereupon, to the best of his ability, assist the vagrant in seeking employment, and may in the meantime, if he think fit, keep the vagrant in the charge of the Police.

Should the vagrant fail to obtain suitable employment within a reasonable time not exceeding fifteen days from such arrival, such officer shall forward him to a Government work-house in the manner provided by section five.

Subsistence allowance.

8. Every person while in charge of the Police, whether before inquiry as to his vagrancy, or while he is on his way, under section five, to the work-house, or, under section six, to a place of employment, shall be entitled to an allowance for his subsistence at the rate of eight annas per diem.

The Magistrate of Police or Justice, before whom any vagrant is taken under section seven, may, if he think fit, order the vagrant to receive a similar allowance while he is seeking employment.

The Local Government shall cause such allowance to be paid out of such funds at its disposal and in such manner as it may from time to time direct.

Power to give certificates.

9. Any Magistrate of Police or Justice of the Peace exercising powers as aforesaid may, on being satisfied that any person of European extraction is not likely to become a vagrant, give such person a certificate under his hand stating that for a certain time (mentioning it) not exceeding six months from the date of the certificate, and within certain limits (mentioning them), nothing in sections four, five, six and seven shall apply to the holder of such certificate; and thereupon, so long as the certificate remains in force, nothing in sections four, five, six and seven shall apply to such person within such limits as aforesaid.

Form of certificate.

Every such certificate shall be in the form set forth in the first schedule to this Act annexed, or as near thereto as circumstances will admit.

Power to invest certain officials with jurisdiction of Justices under sections 5, 7, 8 and 9.

10. The Local Government may from time to time, by notification in the official Gazette, invest any Justice of the Peace, District Superintendent of Police or Assistant District Superintendent of Police with the jurisdiction and powers conferred by this Part on a Justice of the Peace exercising powers as aforesaid.

PART III.—GOVERNMENT WORK-HOUSES.

11. The Local Government, with the previous sanction of the Governor General in Council, may provide work-houses with their necessary furniture and establishment, at such places as it may think proper, for the temporary reception of vagrants, Provision of Government work-houses.

or may, by writing under the hand of a Secretary to such Government, certify any building, or part of a building not provided as a work-house under the former part of this section, to be fit for a work-house for the purposes of this Act. Every such certificate shall be published in the local official Gazette, and thereupon such building or part of a building shall, until the Local Government otherwise orders, be deemed a Government work-house under this Act.

The Local Government shall allow the same scale of diet for the support of vagrants received in such work-houses as is for the time being allowed for Europeans confined in the local prisons or penitentiaries. Scale of diet.

12. Every such work-house shall be under the immediate charge of a Governor, who shall be appointed, and may be suspended or removed, by the Local Government. Superintendence of work-houses.

Every such Governor shall, if the Local Government think fit, be subject to the orders of a Committee of Management appointed from time to time by such Government, or, in the absence of a Committee, to the orders of such officer as the Local Government from time to time appoints in this behalf.

13. Every such Governor may order that any vagrant admitted to the work-house under his charge shall be searched, and that the vagrant's bundles, packages and other effects shall be inspected, and may direct that any money then found with or on the vagrant, shall be applied (subject to the orders of the Local Government) towards the expense of carrying this Act into execution, and may order that all or any of the said effects shall be sold, and that the produce of the sale be applied as aforesaid, but subject to the like orders. Search of vagrants.

14. Vagrants admitted to work-houses under this Act shall be subject to such rules of management and discipline as may from time to time be prescribed by the Local Government with the previous sanction of the Governor General in Council. Discipline.

The Local Government may authorize any Governor of a work-house to punish (under or not under the supervision and direction of a Committee of Management, as the Local Government thinks fit) any vagrant who

knowingly disobeys or neglects any such rule with any one of the following punishments (namely)—

(*a*) solitary confinement within the work-house for any time not exceeding seven days;

(*b*) solitary confinement within the work-house for any time not exceeding three days upon a diet reduced to such extent as the Local Government may prescribe;

(*c*) hard labour for any time not exceeding seven days;

(*d*) reduction of diet to such extent as the Local Government may prescribe for any time not exceeding five days;

Or in lieu of any such punishment any such vagrant may, on conviction before a Magistrate of such disobedience or neglect, be punishable with rigorous imprisonment in jail for a term which may extend to three months.

Refusal to accept employment.

15. The Governor and the Committee of Management (if any) of every such work-house shall use his and their best endeavours to obtain outside the work-house suitable employment for the vagrants admitted thereto.

When such employment is obtained, any such vagrant refusing or neglecting to avail himself thereof, shall, on conviction before a Magistrate, be punishable with rigorous imprisonment for a term which may extend to one month.

PART IV.—Removal from India.

Removal of vagrants.

Cost of removal.

16. If after the lapse of a reasonable time no suitable employment is obtainable for any such vagrant, the Local Government may either (when he has entered into such agreement as hereinafter mentioned) cause him to be removed from British India in manner hereinafter provided, the cost of such removal being paid by Government;

or it may cause sections twenty-three and thirty to be read to him and may then release him.

Agreements with vagrants.

17. Any vagrant or other person of European extraction may enter into an agreement in writing with the Secretary of State for India in Council, binding himself—

(*a*) to proceed to such port in British India as shall be mentioned in the agreement;

(*b*) there to embark on board such ship and at such time as is directed by an officer appointed in this behalf by the Local Government of the terri-

tories in which such port is situate, for the purpose of being removed from India at the expense of the said Secretary of State in Council;

(*c*) to remain on board such ship until she has arrived at her port of destination; and

(*d*) not to return to India until five years have elapsed from the date of such embarkation.

Every such agreement may be on unstamped paper and shall be in the form set forth in the second schedule to this Act annexed, or as near thereto as circumstances admit. Form of agreement.

18. The Local Government of the territories in which the said port is situate, may enter into such contracts for conveyance or otherwise, and perform such other acts as may be necessary to carry out such agreement on the part of the said Secretary of State in Council. Power to perform agreement.

PART V.—Penalties.

19. Any person refusing or failing to accompany a Police officer to, or to appear before, a Magistrate of Police or Justice of the Peace, for the purpose of preliminary inquiry, when required so to do under section four, may be arrested without warrant and shall be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with imprisonment for a term which may extend to one month, or with fine, or with both. Refusal to go before Magistrate.

And any person who, when required under section four to accompany a Police officer to, or to appear before, a Magistrate of Police or Justice of the Peace, commits an offence punishable under section three hundred and fifty-three of the Indian Penal Code, may, whether he be or be not an European British subject, be tried by a Magistrate for such offence. Assaulting Police.

20. Any vagrant who escapes from the Police while committed to their charge under the orders specified in sections five and six, Escaping from Police.

or who leaves a work-house, under this Act, without permission from the Governor, Quitting work-house without leave.

or who having with such permission left a work-house for a limited time or a specified purpose, fails to return on the expiration of such time or when such purpose has been accomplished or proves to be impracticable, Failing to return to work-house.

shall for every such offence be punishable, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

21. Any person entering into an agreement under section seventeen, and failing to proceed in pursuance thereof to the port therein mentioned, Failing to proceed to port of embarkation.

Refusing to go on board ship.

or refusing to embark when directed so to do under the same section,

Escaping from ship.

or escaping from the ship in which he has so embarked before she has reached her port of destination,

shall for every such offence be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months.

Returning to India.

22. Any person returning to India within five years of the date of his embarkation pursuant to any agreement entered into under section seventeen, unless specially permitted so to do by the Secretary of State for India, shall for every such offence be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

Begging.

23. Any person of European extraction found asking for alms when he has sufficient means of subsistence,

or asking for alms in a threatening or insolent manner,

or continuing to ask for alms of any person after he has been required to desist,

shall be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term not exceeding one month for the first offence, two months for the second, and three months for any subsequent offence.

Procedure on close of imprisonment.

24. Every person imprisoned under section nineteen, twenty, twenty-one, twenty-two or twenty-three, shall, at the end of his term of imprisonment, be placed before the nearest Magistrate of Police or Justice of the Peace exercising powers as aforesaid, who shall, if he think fit, forthwith deal with him in the manner prescribed by sections five and six.

The order of transmission shall certify the fact of the previous conviction.

Penalty on shipmaster bringing European convicts to India.

25. Every master of a ship landing or allowing to land in any part of British India any person of European extraction who has been convicted in any other part of Her Majesty's dominions of felony, or of an offence which, if committed in England, would be felony, shall, on conviction before a Magistrate, be liable, for every such person so landed or allowed to land, to pay a fine not exceeding five hundred rupees and not less than one hundred rupees, and, in default of payment, to imprisonment for any term not exceeding two months,

unless the defendant satisfy the Magistrate by evidence (which the defendant is hereby declared competent to give), that he had made due

enquiry as to the person so landed, or allowed to land, and that he had no reason to believe that such person had been convicted as aforesaid.

Power to exempt certain ship-masters.

The Governor General in Council may from time to time, by notification in the *Gazette of India*, exempt from the operation of the former part of this section the masters of any class of ships, on such terms as to the Governor General in Council seem fit, and either in respect of all or of any of the persons on board such ships.[a]

The Governor General in Council may in like manner revoke any exemption made under this section.

Recovery of fines.

26. All fines imposed under this Act may be recovered, if for offences committed outside the local limits of the towns of Calcutta, Madras and Bombay, in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by any Act regulating the Police of such towns in force for the time being.

Payment of fines.

All fines recovered under this Act shall be paid to the credit of the Government of India, or as the Governor General in Council from time to time directs.

Prosecutions.

27. All prosecutions under this Act may be instituted and conducted by such officer as the Local Government from time to time appoints in this behalf.

Limits of jurisdiction.

28. In imposing penalties under this Part and Part III of this Act, no person shall exceed the limits of jurisdiction prescribed for him by the Code of Criminal Procedure in the case of offenders not being European British subjects.

Validity of proceedings where Magistrate is not the nearest.

29. No proceeding under this Act shall be deemed invalid by reason only that the Magistrate of Police or Justice, before whom a person, apparently a vagrant, was required to appear, or before whom a person was placed under section twenty-four, was not the nearest.

PART VI.—MISCELLANEOUS.

Deprivation of privileges of European British subjects under Criminal Procedure Code.

30. Any European British subject who, upon the summary enquiry mentioned in section five, has been determined to be a vagrant, or who has been convicted under section twenty-two or section twenty-three, shall, so long as he remains in India, be subject, beyond the limits of the said towns, to the provisions of the Code of Criminal Procedure (other than those contained in chapter XXXVIII of the same Code) applicable to an European not being a British subject.

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[a] *Gazette of India*, 22nd October 1870, p. 723.

If from any cause he is committed or held to bail by a Justice of the Peace to take his trial before a High Court, he shall not be at liberty to object to the jurisdiction of such Justice of the Peace or High Court on the ground of any thing contained in the former part of this section.

Save as aforesaid nothing herein contained shall be deemed to confer jurisdiction over European British subjects on Magistrates, who, if this Act had not been passed, would have had no such jurisdiction.

Liability of importers of Europeans or employers of soldiers becoming vagrants.

31. Whenever any person of European extraction lands in India, or, being a Non-Commissioned Officer or Soldier in Her Majesty's Army, leaves that Army in India, under an engagement to serve any other person, or any Company, Association or body of persons in any capacity,

and whenever a sailor of European extraction not being a British subject, is discharged from his ship in any British Indian port,

and becomes chargeable to the State as a vagrant within one year after his arrival in India or leaving the Army, or discharge from his ship, as the case may be, then the person, or Company, Association or body, to serve whom he has so landed in India or left the Army, or, in the case of a sailor, the person who is at the date of the discharge the owner or agent of the ship from which the sailor has been so discharged, shall be liable to pay to the Government the cost of his removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Recovery of charges.

Such costs and charges shall be recoverable by suit as if an express agreement to repay them had been entered into with the Secretary of State for India in Council, by the person, Company, Association, body, owner or agent chargeable.

Liability of consignee in case of Europeans who arrive in charge of animals and become vagrants.

32. When any person of European extraction lands in India, being or having been during his passage to India, or from one Indian port to another, in charge of, or in attendance upon, any animal, and becomes chargeable to the State as a vagrant within one year after his arrival in India, then

the consignee of such animal,

or the agents in India for the sale of such animal,

or, if such consignee or agents cannot be found,

the agent to whom the ship in which such animal arrived in India was consigned,

shall be liable to pay to the Government the cost of such person's removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Any such consignee or agent shall be entitled to charge the consignor or principal for any payment to the Government under this section.

For the purposes of this section 'Consignee' includes any person who undertakes to dispose of such animal for the benefit of the consignor, and

'Consignee' defined.

'Agent' includes any person who undertakes the agency of such ship, though it may not have been consigned to him.

'Agent' defined.

33. In any proceeding under this Part, a certified copy of the declaration recorded under section five, shall be *primâ facie* evidence that the European British subject named therein has been, upon the summary enquiry mentioned in that section, determined to be and that he was at the date of the declaration a vagrant.

Evidence of declaration under section 5.

34. The powers and duties conferred and imposed by sections sixteen and eighteen, on a Local Government, may be exercised and performed by such class of officers as the Local Government from time to time, by notification in the official Gazette, appoints in this behalf.[a]

Exercise of powers conferred on Local Government.

35. The powers and duties conferred and imposed by this Act on Magistrates, Justices of the Peace exercising the powers of a Magistrate of the first class, and Police officers respectively may, in places beyond the limits of British India, be exercised and performed by such persons respectively as the Governor General in Council from time to time, by notification in the *Gazette of India*, appoints in this behalf.

Exercise in Native States of powers conferred on Magistrates, Justices, and Police.

36. The Governor General in Council may from time to time make rules, consistent with this Act, for the guidance of officers in matters connected with its enforcement.

Power to make rules for guidance of officers.

All such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

THE FIRST SCHEDULE.

(*See section* 9.)

WHEREAS *E. F.* of a person of European extraction and holder of this certificate, has appeared before me and satisfied me that he is not likely to become a vagrant within the meaning of the European Vagrancy Act, 1874, THESE ARE TO CERTIFY that for the space of months from the date hereof and within the Province [*or* District] of nothing in sections four, five, six and seven of the same Act shall be deemed to apply to him, unless he is found asking for alms, IN WHICH CASE this certificate shall be void.

(Signed) *G. H.*

Dated this day of 18 .

Magistrate of Police for the Town of *or* Justice of the Peace for exercising the powers of a Magistrate of the class.

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[a] See *N. W. Provinces Gazette*, 10th July 1875, p. 927.

THE SECOND SCHEDULE.

(*See section* 17.)

ARTICLES OF AGREEMENT made this day of 18 BETWEEN the Secretary of State for India in Council of the one part and *C. D.* of, &c., [*the vagrant*] of the other part: Each of the parties hereto (so far as relates to the acts on his own part to be performed) hereby agrees with the other of them as follows:—

1. The said *C. D.* shall proceed forthwith to the port of [*the port of embarkation*].

2. The said *C. D.* shall there embark on board such ship and at such time as an officer appointed in this behalf by the Local Government shall direct.

3. The said *C. D.* shall remain on board such ship until she shall have arrived at her port of destination.

4. The said *C. D.* shall not return to India until five years shall have elapsed from the date of such embarkation, unless specially permitted so to return by the said Secretary of State.

5. The said Secretary of State in Council shall defray the cost of the transit of the said *C. D.* to the said port, and of his lodging and subsistence during such transit and during his detention (if any) at the same port, and shall contract with the owner of the said ship, or his agent, for the passage of the said *C. D.* on board the said ship, and for his subsistence during the voyage for which he shall embark as aforesaid.

In witness whereof *A. B.* (by order of the Governor General of India in Council [*or* the Governor of in Council *or* the Lieutenant-Governor of , *or* the Chief Commissioner of], on behalf of the said Secretary of State in Council), and the said *C. D.* have hereunto set their hands the day and year first above written.

ACT No. XI OF 1874.

Received the Governor General's assent on the 5*th May* 1874.

An Act to amend the Code of Criminal Procedure.

Preamble.

FOR the purpose of amending the Code of Criminal Procedure; It is hereby enacted as follows:—

Amendment of section 2.

1. In section two, after the fourth paragraph, the following shall be inserted (namely):—

"The cases in which the Police may arrest without warrant or not, in the case of each offence under the Indian Penal Code or any other law referred to in section eight;

whether a warrant or a summons shall ordinarily issue in the first instance,

whether the offence is bailable or not, and

the Court by which the offence is triable,

are indicated respectively by the third, fourth, fifth and seventh columns of the fourth schedule hereto annexed."

Addition to section 4.

2. To section four the following clause shall be added (namely) :—

"In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions."

Amendment of sections 18 and 36.

3. To sections eighteen and thirty-six, the following words shall be added (namely) :—

"or if he think further enquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused person to be necessary, he may direct such enquiry or evidence to be made or taken."

Amendment of section 39.

4. In section thirty-nine, after the word "limits," the following words shall be inserted (namely) : "and may, with the previous sanction of the Governor General in Council, declare any local area to be a District."

Addition to section 42.

5. To section forty-two, the following clause shall be added (namely) :—

"With the previous sanction of the Governor General in Council, the Local Government may delegate, with such limitations as it may think proper, to any officer under its control, the power conferred by the first clause of this section."

Amendment of sections 44 and 47.

6. In section forty-four and the first paragraph of section forty-seven, the word "criminal" shall be omitted.

Addition to section 46.

7. To section forty-six, the following illustration shall be added (namely) :—

"*Illustration.* [*See above*, p. 1615.]

Amendment of section 59.

8. In section fifty-nine, after the word "Court," the words "inferior to a Court of Session" shall be inserted.

Addition to section 63.

9. To the second paragraph of section sixty-three, the following words shall be added (namely) :—

"Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, cap. 104, section fifteen, or under section sixty-four of this Code."

Proviso of section 64 repealed.

10. In section sixty-four, the proviso shall be repealed.

Power to transfer criminal cases from one High Court to another.

11. After section sixty-four, the following section shall be inserted (namely) :—

"64 A. [*See above*, p. 1618.]

Amendment of section 75.

12. For the second paragraph of section seventy-five, the following shall be substituted (namely) :—

"When the offence, or one of the offences, complained of is punishable with death or transportation for life, the commitment shall be to the High Court.

"And where any person so committed is charged with several offences, of which one is punishable with death or transportation and the other with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offence."

Amendment of section 186.

13. In section one hundred and eighty-six, for the words "charged before any Criminal Court with an offence," the following words shall be substituted (namely) :—

"accused in any Criminal Court of an offence."

Amendment of section 195, Explanation III.

14. In section one hundred and ninety-five, Explanation III, for the word "cannot," the words "shall not ordinarily" shall be substituted.

Addition to section 202.

15. To section two hundred and two, clause first, the following words shall be added (namely) : "unless the Magistrate is satisfied that such Government Pleader or other person is already aware of the commitment and the form of the charge."

Addition to section 216.

16. To section two hundred and sixteen, the following explanation shall be added (namely) :—

"EXPLANATION III. [*See above*, p. 1654.]

Amendment of section 222, para. (10).

17. In section two hundred and twenty-two, for paragraph (10), the following shall be substituted (namely) :—

"(10.) Insult with intent to provoke a breach of the peace under section five hundred and four, and criminal intimidation under section five hundred and six, of the Indian Penal Code."

Amendment of section 231.

18. In section two hundred and thirty-one, for "section four hundred and seventy-two," the following words shall be substituted (namely) :—

"Section thirty-three, section four hundred and thirty-five, section four hundred and seventy-two, or section four hundred and seventy-four."

Amendment of section 247.

19. To section two hundred and forty-seven, the following words shall be prefixed (namely) :—"The person conducting the prosecution shall then open his case, and"

20. For the first paragraph of section two hundred and forty-nine, the following shall be substituted (namely) :— Amendment of section 249.

"When a witness is produced before the Court of Session or before the High Court in the exercise of its original or appellate criminal jurisdiction, the evidence given by him before the committing Magistrate may, in the discretion of the presiding Judge, be treated as evidence in the case, if it was duly taken in the presence of the accused person."

21. In the fourth paragraph of section two hundred and sixty-three, after the word "verdict," the words "of the jurors or" shall be inserted; and for the fifth and sixth paragraphs of the same section, the following shall be substituted (namely) :— Amendment of section 263.

"If the Court disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the prisoner has been tried, and considers it necessary for the ends of justice to do so, it may submit the case to the High Court. If the Court does so, it shall not record judgment of acquittal or of conviction on any of the charges on which the prisoner has been tried; but it may either remand him to custody or admit him to bail.

"The High Court shall deal with the case so submitted as it would deal with an appeal, but it may acquit or convict the accused person on the facts as well as law, without reference to the particular charges as to which the Court of Session may have disagreed with the verdict; and if it convict him, shall pass such sentence as might have been passed by the Court of Session."

22. For section two hundred and seventy-one, the following sections shall be substituted (namely) :— Amendment of section 271.

"271. [*See above*, p. 1666.] Appeal from sentence of Sessions Judge.

"271A. [*See above*, p. 1666.] Procedure in case of sentence of death.

"271B. [*See above*, p. 1666.] Procedure where Judges of Court of appeal, &c., are equally divided.

23. In the second paragraph of section two hundred and seventy-two, for the words "and the rules of limitation shall not apply to appeals presented under this section," the following clause shall be substituted (namely) :—"No appeal shall be presented under this section after six months from the date of the judgment complained of."[a] Amendment of section 272.

[a] 11 Bomb. 117.

Amendment of section 274.

24. In the second clause of section two hundred and seventy-four, the last twenty words shall be omitted, and to the section the following explanation shall be added (namely) :—

" EXPLANATION. [*See above*, p. 1667.]

Amendment of section 276.

25. For section two hundred and seventy-six, the following shall be substituted (namely) :—

Copies of proceedings.

" 276. [*See above*, p. 1667.]

Amendment of section 278.

26. To section two hundred and seventy-eight, the following clause shall be added (namely) :—

" In rejecting an appeal under this section, the Appellate Court shall not enhance the sentence."

Amendment of section 279.

27. To section two hundred and seventy-nine, the following words shall be added (namely) :—

" and in cases under section two hundred and seventy-two, where the Appellate Court decides to hear the appeal, it shall also cause notice to be given to the respondent."

Amendment of section 280.

28. To the first clause of section two hundred and eighty, the following words shall be added (namely) :—

" or order the appellant to be retried."

Amendment of section 296.

29. In the second paragraph of section two hundred and ninety-six, the words " Provided that" shall be omitted and the following words shall be added (namely) :—" upon the matter of such complaint or of which the accused person has been, in the opinion of the Court or Magistrate, improperly discharged.

" Provided that, if in the opinion of such Court or Magistrate, the evidence shews that some other offence has been committed by the accused person, such Court or Magistrate may direct the Subordinate Court to inquire into such offence."

Amendment of section 297.

30. In the third paragraph of section two hundred and ninety-seven, for the word " inconveniently," the word " incorrectly" shall be substituted.

Amendment of section 298.

31. For section two hundred and ninety-eight, the following shall be substituted (namely) :—

" 298. [*See above*, p. 1674.]

Amendment of section 302.

32. For the fourth paragraph of section three hundred and two, the following section shall be substituted (namely) :—

" 302A. [*See above*, p. 1675.]

Amendment of sections 311 and 312.

33. In the third paragraph of section three hundred and eleven, after the word " Magistrate," the words " or a Superintendent of a Jail" shall be inserted.

And in the first and second paragraphs of section three hundred and twelve, after the word "Magistrate," the words "or Superintendent" shall be inserted.

34. To the first clause of section three hundred and twenty-two, the following words shall be added (namely), "or grant a reprieve or respite in respect of such sentence," and the following clauses shall be added to the same section (namely):— Amendment of section 322.

"This section applies to all punishments inflicted by the High Court. Provided that nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites or remissions of punishment:

"When any fine or forfeiture is imposed on any person for any offence, the Governor General in Council or the Local Government may (subject to the provisions of section three hundred and eight) direct that a share or proportion of such fine be paid over to the prosecutor towards defraying his expenses, as the Governor General in Council or the Local Government thinks fit."

35. After the second paragraph of section three hundred and thirty, the following shall be inserted (namely):— Amendment of section 330.

"If the witness is within the local limits of the ordinary original criminal jurisdiction of any of the High Courts of Judicature at Fort William, Madras and Bombay, the Court dispensing with his personal attendance may direct a commission to any Police Magistrate within such limits, and such Police Magistrate shall have the like power to compel the attendance and examination of witnesses as he possesses for that purpose in cases pending before him."

And in the third paragraph of the same section, for the words "to which," the words "upon which" shall be substituted, and for the words "cause a return to be made," the words "shall examine the witness" shall be substituted, and after the word "Magistrate," the words "or Police Magistrate" shall be inserted.

And after the fourth paragraph of the same section, the following paragraph shall be inserted (namely):—

"After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto, and the deposition of such witness may be used as evidence in the case and shall form part of the record."

36. In section three hundred and seventy-nine, the following words shall be omitted (namely), "by or under the direction of an officer in charge of a Police-station, or by a Police officer making an investigation." Amendment of section 379.

Amendment of section 398.

37. In the second paragraph of section three hundred and ninety-eight, for the words "accused person," the words "party or witness" shall be substituted.

Amendment of section 418.

38. In section four hundred and eighteen, before the word "trial," the words "inquiry or" shall be inserted;

and to the same section the following explanation shall be added (namely) :—

"EXPLANATION. [*See above*, p. 1704.]

Amendment of section 425.

39. To section four hundred and twenty-five, the following clause shall be added (namely) :—

"The trial of the fact of the unsoundness of mind of the accused person shall be deemed to be part of his trial before the Court."

Amendment of section 451.

40. For the first sentence of the illustration to section four hundred and fifty-one, the following shall be substituted (namely) :—

"A is convicted of an offence under section 196 of the Indian Penal Code upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine, was false or fabricated."

Amendment of section 464.

41. For the second paragraph of section four hundred and sixty-four, the following shall be substituted (namely) :—

"The judgment or order shall be explained to the accused person or person affected by it, and on his application a copy thereof shall be given to him without delay free of cost and in his own language, if practicable, if not, in the language of the Court."

And to the seventh paragraph of the same section, the following words shall be added (namely) :—

"where such error or defect is in a matter not affecting the merits of the case."

Addition to section 466.

42. To section four hundred and sixty-six, the following clause shall be added (namely) :—

"In this section the expressions 'Judge' and 'public servant' shall be taken to have the meaning assigned to them respectively by the Indian Penal Code."

Chapter XXXVI applied to Presidency Towns.

43. Chapter XXXVI *(Of the Dispersion of unlawful Assemblies)* shall be deemed to apply to the towns of Calcutta, Madras and Bombay, and the word "Magistrate," wherever it occurs in the said chapter, shall be deemed to include a Magistrate of Police.

Amendment of section 503.

44. To section five hundred and three, the following words shall be added (namely) :—"And in case such penalty cannot be so recovered, the surety shall

be liable, by order of such Magistrate, to imprisonment in the civil jail for a period not exceeding six months."

45. In section five hundred and twenty-seven, for the words "four hundred and twenty-one," the words "five hundred and twenty-one" shall be substituted. Correction of section 527.

46. In the third column of the fourth schedule to the Code of Criminal Procedure, opposite No. 323, for the words "Shall not arrest without warrant," the words "May arrest without warrant" shall be substituted; and opposite No. 428, for the word "Ditto," the words "May arrest without warrant" shall be substituted. Amendment of schedule IV, column 3, Nos. 323 and 428.

47. In this Act, "section" means section of the Code of Criminal Procedure. Interpretation of "section."

And all references to the Code of Criminal Procedure made in Acts heretofore passed or hereafter to be passed shall be read as if made to such Code as amended by this Act. References to Code of Criminal Procedure.

ACT No. XIV of 1874.

Received the Governor General's assent on the 8th December 1874.

An Act to ascertain the enactments in force in various parts of British India, and for other purposes.

WHEREAS various parts of British India have never been brought within, or have from time to time been removed from, the operation of the general Acts and Regulations and the jurisdiction of the ordinary Courts of Judicature; Preamble.

And whereas doubts have arisen in some cases as to which Acts or Regulations are in force in such parts, and in other cases as to what are the boundaries of such parts: And whereas among such parts are the territories specified in the first schedule hereto annexed, and it is expedient to provide readier means than now exist for ascertaining the enactments in force in such territories and the boundaries thereof, and for administering the law therein:

And whereas it is expedient to declare that certain Acts are in force in a tract of land lying between the Railway Station at Satná and the eastern boundary of the Jabalpur Division:—

It is hereby enacted as follows:—

1. This Act may be called "The Scheduled Districts Act, 1874:" Short title.

This Act extends in the first instance to the whole of British India other than the territories mentioned in the first schedule hereto annexed, and it shall Local extent.

come into force in each of the Scheduled Districts on the issue of a notification under section three relating to such District.

Interpretation-clause.

In this Act the term "Scheduled Districts" means the territories mentioned in the first schedule hereto annexed; and, from the date fixed in the resolution next hereinafter mentioned, it shall also include any other territory to which the Secretary of State for India, by resolution in Council, may declare the provisions of the thirty-third of Victoria, chapter three, section one, to be applicable.

Repeal of enactments.

2. The enactments mentioned in the second schedule hereto annexed shall be repealed.

Notification of enactments in force in Scheduled Districts.

3. The Local Government, with the previous sanction of the Governor General in Council, may from time to time, by notification in the *Gazette of India*, and also in the local Gazette (if any)—

(*a*) declare what enactments are actually in force in any of the Scheduled Districts, or in any part of any such District,

(*b*) declare of any enactment that it is not actually in force in any of the said Districts or in any part of any such District,

(*c*) correct any mistake of fact in any notification issued under this section:

Provided that a declaration once made under clause (*a*) or clause (*b*) of this section shall not be altered by any subsequent declaration other than a declaration under clause (*c*) of this section.

Effect of notification under section 3.

4. On the issue, under section three, of a notification declaring what enactments are in force, or not in force, in any Scheduled District, the enactments so notified shall be deemed to be in force or not in force, according to the tenor of the notification, in such District, and every such notification shall be binding on all Courts of law.

Power to extend enactments to Scheduled Districts.

5. The Local Government, with the previous sanction of the Governor General in Council, may from time to time, by notification in the *Gazette of India* and also in the local Gazette (if any), extend to any of the Scheduled Districts, or to any part of any such District, any enactment which is in force in any part of British India at the date of such extension.

Appointment of officers and regulation of their procedure.

6. The Local Government may from time to time—

(*a*) appoint officers to administer civil and criminal justice and to superintend the settlement and collection of the public revenue, and all matters relating to rent, and otherwise to conduct the administration, within the Scheduled Districts,

(*b*) regulate the procedure of the officers so appointed ; but not so as to restrict the operation of any enactment for the time being in force in any of the said Districts,

(*c*) direct by what authority any jurisdiction, powers or duties incident to the operation of any enactment for the time being in force in such District shall be exercised or performed.

7. All rules heretofore prescribed by the Governor General in Council or the Local Government for the guidance of officers appointed within any of the Scheduled Districts for all or any of the purposes mentioned in section six and in force at the time of the passing of this Act, shall continue to be in force unless and until the Governor General in Council or the Local Government, as the case may be, otherwise directs.

Continuance of existing rules and officers.

All existing officers so appointed previous to the date on which this Act comes into force in such District, shall be deemed to have been appointed hereunder.

8. Whenever any question arises as to the line of boundary between any of the Scheduled Districts and other territory, such officer as the Local Government or (where the said District and the other territory are not subject to the same Local Government) as the Governor General in Council from time to time appoints, may consider and determine such line of boundary ;

Settlement of questions as to boundary.

and the order made thereon by such officer, if confirmed by the Government which appointed him, shall be conclusive in all Courts of Justice.

9. Any person liable to be imprisoned or to be transported beyond sea under any order or sentence passed by any officer appointed under section six, may (subject to such rules as the Governor General in Council may from time to time prescribe in this behalf) be imprisoned in such jail or transported to such place as the Local Government directs.

Place of imprisonment or transportation.

10. Acts No. III of 1867, No. XIV of 1867, and No. XXV of 1869 are hereby declared to be in force in the tract of land ceded to the British Government in the year 1863 and lying between the Railway Station at Satná and the eastern boundary of the Jabalpur District.

Extension to Satná strip of Acts relating to public gambling, pándhari-tax and salt.

11. Nothing contained in this Act or in any notification issued under the powers hereby conferred shall be deemed—

Saving of criminal jurisdiction over European British subjects.

(*a*) to affect the criminal jurisdiction of any Court over European British subjects, or

(*b*) to affect any law other than laws contained in Acts or Regulations or in rules made in exercise of powers conferred by such Acts or Regulations

THE FIRST SCHEDULE.

(*See section* 1.)

PART I.

SCHEDULED DISTRICTS, MADRAS.

I.—*In Ganjam.*

(1.) The Gumsúr Maliahs, including Chokapad.
(2.) The Surada Maliahs.
(3.) The Chinna Kimedi Maliahs.
(4.) The Pedda Kimedi Maliahs.
(5.) The Bodaguda Maliahs.
(6.) The Surangi Maliahs.
(7.) The Parla Kimedi Maliahs.
(8.) The Muttás of Koradá and Ronaba (otherwise called Srikarma).
(9.) The Chighatti Maliah.
(10.) The Juradá Maliah.
(11.) The Jalantra Maliah.
(12.) The Mandasa Maliah.
(13.) The Budarasinghi Maliah.
(14.) The Kuttingia Maliah.

II.—*In Vizagapatam.*

(1.) The Jeypur Zamíndárí.
(2.) Golconda Hills, west of the River Boderu.
(3.) The Madugol Maliahs.
(4.) The Kasipur Zamíndárí.
(5.) The Panchipenta Maliahs.
(6.) Mondemkolla, in the Merangi Zamíndárí.
(7.) The Konda Muttá of Belgám.
(8.) The Gumma and Konda Muttás of Kurpam.
(9.) The Kottam, Rám and Konda Muttás of Pálkonda.

III.—*In the Godávari District.*

(1.) The Bhadráchalam Táluq.
(2.) The Rákapilli Táluq.
(3.) The Rampá Country.

IV.—*In the Indian Ocean.*

The Laccadive Islands, including Minicoy.

PART II.

Scheduled Districts, Bombay.

I.—The Province of Sindh.

II.—The Panch Maháls.

III.—Aden.

IV.—The villages belonging to the following Mehwassi Chiefs :—

(1.) The Párví of Káthí.

(2.) The Párví of Nál.

(3.) The Párví of Singpúr.

(4.) Walwi of Gaohállí.

(5.) The Wassáwa of Chikhlí.

(6.) The Párví of Nawalpúr.

PART III.

Scheduled Districts, Bengal.

I.—The Jalpáígori and Darjeeling Divisions.

II.—The Hill Tracts of Chittagong.

III.—The Santhál Parganas.

IV.—The Chutiá Nágpur Division.

V.—The Maháls of Angúl and Banki.

PART IV.

Scheduled Districts, North-Western Provinces.

I.—The Jhánsí Division, comprising the Districts of Jhánsí, Jalaun and Lalatpur.

II.—The Province of Kumáon and Garhwál.

III.—The Terai Parganas, comprising—Bázpur, Káshípúr, Jaspúr, Rudarpúr, Gadarpúr, Kilpúrí, Nának-Matthá and Bilherí.

IV.—In the Mirzapur District—

(1.) The tappás of Agori Khás and South Kon in the Pargana of Agori.

(2.) The tappá of British Singrauli in the Pargana of Singrauli.

(3.) The tappás of Phulwá, Dudhi and Barhá in the Pargana of Bichipár.

(4.) The portion lying to the South of the Kaimor Range.

V.—The Family Domains of the Mahárájá of Benares, comprising the following parganas :—

Bhadohi and Kheyra Mángror in the Mirzapur District,

Kaswá Rájá in the Benares District.

VI.—The tract of country known as Jaunsar Báwar in the Dehra Dún District.

PART V.

Scheduled Districts, Panjáb.

The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán, Dera Ghází Khán, Lahaul and Spiti.

PART VI.

Scheduled Districts, Central Provinces.

Chhattisgarh Zamindáris, viz.:—

1. Khariár.
2. Bindrá Nawágarh.
3. Sahezpúr.
4. Gándai.
5. Silhetí.
6. Barbaspúr.
7. Thákurtolá.
8. Lohárá.
9. Gondardehí.
10. Fingeswar.
11. Pándariá.
12. Pendrá.
13. Mátín.
14. Uprorá.
15. Kendá.
16. Láphá.
17. Chhúrí.
18. Korbá.
19. Chapá.
20. Borá Sámbhar.
21. Phúljhar.
22. Kolábirá.
23. Rámpúr.

Chándá Zamindáris.

1. Ahírí.
2. Ámbágarh Chaukí.
3. Áundhí.
4. Dhanorá.
5. Dúdhmálá.
6. Gewardá.
7. Jhárápáprá.
8. Khutgáon.
9. Koráchá.
10. Kotgal.
11. Muramgáon.
12. Pánábáras.
13. Palasgarh.
14. Rángi.
15. Sirsundí.
16. Sonsarí.
17. Chándálá.
18. Gilgáon.
19. Páwí Mutándá.
20. Pategáon.

Chhindwárá Jágírdárís.

1. Haraí.
2. Chháter.
3. Gorakhghát.
4. Gorpání.
5. Baktágarh.
6. Bardágarh.
7. Pachmarhí.
8. Partábgarh.
9. Almod.
10. Sonpúr.
11. Bariám Pagárá.

PART VII.

The Chief Commissionership of Coorg.

PART VIII.

The Chief Commissionership of the Andaman and Nicobar Islands.

PART IX.

The Chief Commissionership of Ajmer and Mairwára.

PART X.

The Chief Commissionership of Assam.

PART XI.

The Hill Tracts of Arakan.

PART XII.

The Pargana of Mánpur.

PART XIII.

The Cantonment of Morar.

THE SECOND SCHEDULE.

(*See section* 2.)

Number and year.	Title.
XI of 1846	An Act for the exemption of certain Territory in the Province of Candeish and the Zillah Ahmednuggur from the operation of the General Regulations.
XXXVII of 1855 ...	An Act to remove from the operation of the general Laws and Regulations certain Districts inhabited by Sonthals and others, and to place the same under the superintendence of an Officer to be specially appointed for that purpose.
X of 1857	An Act to amend Act XXXVII of 1855.
XXII of 1860 ...	An Act to remove certain tracts on the Eastern border of the Chittagong District from the jurisdiction of the tribunals established under the general Regulations and Acts.
XIV of 1861	An Act to remove certain tracts of Country in the Rohilcund Division from the jurisdiction of the tribunals established under the general Regulations and Acts.
XIX of 1864	An Act to remove certain tracts of Country in the District of Mirzapore from the jurisdiction of the local Courts.
IV of 1868	An Act to exempt certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force in that Presidency.
XXII of 1869 ...	An Act to remove the Gáro Hills from the jurisdiction of the tribunals established under the General Regulations and Acts and for other purposes.
	BENGAL ACT.
IV of 1863	An Act to amend Act XXII of 1860 (to remove certain tracts on the eastern border of the Chittagong District from the jurisdiction of the tribunals established under the general Regulations and Acts).

ACT No. XV OF 1874.

Received the Governor General's assent on the 8th December 1874.

An Act for declaring the local extent of certain Enactments, and for other purposes.

WHEREAS it is expedient to declare the local extent of certain Acts passed by the Governor General of India in Council, the Legislative Council of India, and the Council of the Governor General of India assembled for the purpose of making Laws and Regulations; And whereas it is also expedient to consolidate the laws relating to the local extent of certain Acts and Regulations in the Presidencies of Fort St. George and Bombay, and in the Lower and the North-Western Provinces of the Presidency of Fort William in Bengal: It is hereby declared and enacted as follows:— Preamble.

1. This Act may be called "The Laws Local Extent Act, 1874." Short title.

2. In this Act the expression "Scheduled Districts" means the territories mentioned in the sixth schedule hereto annexed. Interpretation-clause.

3. The Acts mentioned in the first schedule hereto annexed are now in force throughout the whole of British India, except the Scheduled Districts. Local extent of Acts in first schedule.

4. The enactments mentioned in the second schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Governor of Fort St George in Council, except the Scheduled Districts subject to such government. Local extent of enactments in second schedule.

5. The enactments mentioned in the third schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Governor of Bombay in Council, except the Scheduled Districts subject to such government. Local extent of enactments in third schedule.

6. The enactments mentioned in the fourth schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Lieutenant-Governor of Bengal, except the Scheduled Districts subject to such government. Local extent of enactments in fourth schedule.

7. The enactments mentioned in the fifth schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William, except the Scheduled Districts subject to such government. Local extent of enactments in fifth schedule.

8. Nothing herein contained shall— Savings.

(*a*) bar the power of the Governor General in Council or the Local Government, under any law for the time being in force, to extend to any place any Act mentioned in the said first schedule;

(*b*) extend any Act empowering the Local Government to extend the same or any part thereof, or affect in any manner the exercise of such power;

(*c*) affect the operation of any Act or Regulation heretofore extended to or declared to be in force in any of the Scheduled Districts;

(*d*) revive any enactment which has been repealed either generally or with reference to some special subject;

(*e*) extend Madras Regulation VII of 1832 to any place in which Madras Act I of 1866 is in force;

(*f*) extend Act No. XVII of 1840, or Act No. VII of 1852, or Madras Regulation I of 1805, or Madras Regulation II of 1807, to any place in which Madras Act No. VI of 1871 is in force;

(*g*) extend Act No. IX of 1861 to any part of the territories subject to the government of the Governor of Bombay in Council;

(*h*) extend Act No. XI of 1841, or No. XII of 1842, to any place in which Bombay Act No. III of 1867 is in force;

(*i*) extend to the Villages mentioned in the schedule to Act No. IV of 1868 any law not now in force therein;

(*j*) extend to any of the Towns of Calcutta, Madras and Bombay any law not now in force therein.

(*k*) affect the operation of any enactment not mentioned in any of the schedules hereto annexed.

FIRST SCHEDULE.

(*See section* 3.)

ACTS OF THE SUPREME COUNCIL.

YEAR AND NUMBER.			SUBJECT.
1836,	XXVI ...	...	Governor General's Camp Police.
1837,	IV ...	...	Power to acquire land.
1838,	XXV ...	...	Wills executed before the 1st January 1866.
1839,	XXIX ...	...	Dower, when marriage was contracted before 1st January 1866.
,,	XXX ...	...	Inheritance, where descent took place before 1st January 1866.
,,	XXXII ...	...	Interest.
1840,	VI ...	...	Bills of exchange.
1841,	X ...	...	Registration of ships.
,,	XI ...	...	Military Courts of Requests.
,,	XVIII ...	...	Exportation of Military Stores.
,,	XIX ...	...	Curators in cases of successions.

FIRST SCHEDULE—*continued.*

ACTS OF THE SUPREME COUNCIL—*continued.*

YEAR AND NUMBER.		SUBJECT.
1842,	IX	Lease and Release.
,,	XII	Military Bázárs.
1843,	V	Slavery.
1847,	XX	Copyright.
1850,	V	Coasting Trade.
,,	XI	Navigation Laws.
,,	XII	Default of Public Accountants.
,,	XVIII	Protection of Judicial Officers.
,,	XIX	Binding of apprentices.
,,	XXI	Non-forfeiture of rights by loss of Caste.
,,	XXXIV	State Prisoners.
,,	XXXVII	Inquiries into the behaviour of public servants.
1852,	XXX	Naturalization of Aliens.
,,	XXXIII	Enforcement of Judgments of Charter Courts and Military Courts of Requests.
1853,	II	Burdens on land.
1854,	XVIII	Railways.
,,	XXXI	Barring entails: Conveyances by married women.
1855,	XI	Mesne profits and improvements.
,,	XII	Executors and Administrators.
,,	XIII	Compensation for loss occasioned by death caused by actionable wrong.
,,	XXIII	Administration of mortgaged estates in cases of descents occurring or devises made before the 1st January 1866.
,,	XXIV	Penal servitude.
,,	XXVIII	Interest.
1856,	IX	Bills of Lading.
,,	XI	Desertion by European Soldiers.
,,	XV	Marriage of Hindú Widows.
1857,	XI	Offences against the State.
,,	XXV	Forfeiture by Mutineers.
1858,	III	State Prisoners.
,,	XXXV	Estates of Lunatics not subject to jurisdiction of Supreme Courts.
,,	XXXVI	Lunatic Asylums.
1859,	I	Merchant Seamen.
,,	III	Cantonment Joint Magistrates.
,,	VIII	Civil Procedure.
,,	IX	Sections 16, 17, 18 and 20—Forfeitures.

FIRST SCHEDULE—*concluded.*

Acts of the Supreme Council—*concluded.*

Year and Number.		Subject.
1859,	XIV (sec. 15) ...	Suits to recover possession of land.
,,	XV	Patents.
1860,	XXI	Registration of Societies.
,,	XXVII	Collection of debts on Successions.
1861,	IX	Minors.
,,	XXIII	Amending Civil Procedure Code.
1862,	III	Government Seal.
1863,	VI	Sea Customs.
,,	XVI	Excise Duty payable on Spirits used in Arts and Manufactures.
,,	XXIII	Claims to waste-lands.
,,	XXXI	Gazette of India.
1864,	III	Foreigners.
,,	VI	Whipping.
1865,	III	Common Carriers.
,,	XI	Mofussil Courts of Small Causes.
,,	XV	Marriage and Divorce among Parsees.
,,	XXI	Intestate succession among Parsees.
1866,	V	Bills of Exchange, Commercial Law.
,,	X	Companies.
,,	XXI	Dissolution of Marriages of Native Converts.
,,	XXVIII	Trustees and Mortgagees' Powers.
1867,	X	References by Courts of Small Causes in the Mofussil.
,,	XXV	Printing Presses, &c.
1868,	X	Amending Consolidated Customs Act.
1869,	XV	Evidence of Prisoners.
1870,	I	Quarantine.

SECOND SCHEDULE.

(*See section* 4.)

(*a.*)—Madras Regulations.

Year and Number.		Subject.
1802,	III (ss. 1, 11, part of s. 16 only).	Procedure of Civil Courts.
,,	V (s. 30) ...	Sadr Adálat to act according to justice, &c
,,	XIII	Records of Courts.

SECOND SCHEDULE—*continued.*

(*a*).—MADRAS REGULATIONS—*continued.*

YEAR AND NUMBER.		SUBJECT.
1802,	XIX (s. 2) ...	Covenanted Civil Servants forbidden to lend.
,,	XXV	Settlement of Land-revenue.
,,	XXVI (ss. 1, 2 & 3 only).	Registration of málguzárí land.
,,	XXIX	Karnams.
1803,	I	Board of Revenue.
,,	II	Conduct of Collectors, &c.
1804,	V	Court of Wards.
1805,	I	Salt-revenue.
1806,	II (parts of ss. 1 & 7).	Collectors and Karnams.
1807,	II	Salt-revenue.
1808,	VII	Martial Law.
1816,	IV	Village Munsifs.
,,	V	Village Pancháyats.
,,	IX (s. 43 only[a]) ...	Prosecution of Zila Magistrates.
,,	XI	Sections 8, 9, 10—Heads of villages: Section 11, cl. 1—Stolen property: Section 13—Discovery of corpses: Section 14—Register of persons confined by heads of villages; and Section 47—Magistrates charged with maintenance of peace.
,,	XII ...	Reference of claims regarding land and produce to Village and District Pancháyats.
,,	XIV ...	Native Pleaders.
1817,	VII ...	Maintenance of Bridges, &c.; Escheats.
,,	VIII (s. 9 only) ...	Sale for arrears of revenue of estate belonging to Native Officer or Soldier.
1819,	II ...	State Prisoners.
1821,	IV[b] ...	Petty thefts.
1822,	IV ...	Explanation of Madras Regulation XXV, 1802.
,,	VII (cl. 1 of s. 3 only).	Native Officers in Revenue and other Public Departments.
,,	IX ... }	Embezzlement by public servants and malversation in revenue matters.
1823,	III ... }	
1828,	VII ...	Powers of Subordinate and Assistant Collectors.
1829,	V ...	Hindú Wills and Estates.

[a] Repealed by Act No. XVI of 1874.

[b] Sec. 6.

SECOND SCHEDULE—*concluded.*

(*a*).—MADRAS REGULATIONS—*concluded.*

YEAR AND NUMBER.		SUBJECT.
1830,	I ...	Prohibition of Widow-burning.
1831,	V (s. 7, cl. 2 only).	Liability of Ministerial Officers for reception of improperly-stamped document.
,,	VI ...	Hereditary Village Officers.
,,	X ...	Prohibition of Sale of Estates of Minors for Arrears of Revenue.
1832,	III ...	Limitation for Suits against orders of Revenue Authorities under Madras Regulation VII of 1828.
,,	XI ...	Hidden Treasure.
,,	XIV ...	Purchase of clothes from Soldiers.

(*b*)—ACTS OF THE SUPREME COUNCIL RELATING TO THE MADRAS PRESIDENCY.

YEAR AND NUMBER.		SUBJECT.
1837,	XXXVI	Criminal Jurisdiction of Collectors.
1838,	XII	Hidden Treasure.
1839,	VII	Tahsíldárs.
1840,	VIII	Awards of Panchâyats.
,,	XVII	Penalties for breach of Salt Laws.
1844,	VI	Duties.
1846,	I	Pleaders.
,,	IX	Harbours.
1849,	X	Commissioners of Revenue.
1852,	VII	Penalties for breach of Salt Laws.
1853,	XX	Pleaders.
1855,	X	Section 10—Recusant witnesses.
,,	XIV	Military Bázárs.[a]
,,	XXI	Minors.
1857,	VII	Uncovenanted Agency.
1858,	I	Compulsory Labour.
,,	XIV	Minors.
1859,	XXIV	Police.
1860,	XXVIII	Boundary Marks.
1869,	XI	Land Customs.
,,	XXIV	Salt.[b]

[a] Repealed by Act No. XVI of 1874.
[b] Repealed in places to which Act No. XI of 1875 (Madras Salt Act) is extended.

THIRD SCHEDULE.

(*See section* 5.)

(*a*).—BOMBAY REGULATIONS.

YEAR AND NUMBER.			SUBJECT.
1827,	II	...	Section 21 (caste questions); sections 47 to 54 (inclusive) and section 56 (pleaders).
,,	IV ...	...	Section 26 (law applicable to suits): section 69, clauses *second* and *third* (attachment and distraint of crops).
,,	V ...	...	Preamble: section 9 (acknowledgments of debt): section 14 (interest): section 15 (mortgages and pledges).
,	VIII ...	...	Administration of Estates.
,,	XII ...	...	Preamble: section 19 (Magistrate's power to make rules): section 20 (standards of weights and measures): section 27, clause 2 (supervision of suspected persons): section 37, clauses *first* and *second* (responsibility of villages for robberies).
,,	XIII ...	...	Section 34, clause *third* (letter substituted for summons).
,,	XVI ...	...	Revenue Administration.
,,	XXI ...	...	Sections 1 to 16 inclusive (Duty on opium): sections 46, 54 to 66, inclusive (spirits): sections 67 to 73 inclusive (penalties).
,,	XXII ...	...	Section 18 (Furnishing false certificates to soldiers): section 19 (buying uniform, arms, &c.): section 20 (recovery of value of embezzled stores): sections 40, 41, 42, 43 (passage of troops): sections 45, 46, 47 (requisitions for military aid).
,,	XXV ...	...	State Prisoners.
1830,	V ...	...	Section 1 (Revenue Commissioners): section 2, clauses 1, 2, 3 (Collectors and Sub-Collectors).
,,	XIII ...	...	Civil jurisdiction of Jágírdárs.
1831,	XV ...	...	Village Patels.
1832,	II ...	...	Realization of Revenue.
1833,	V ...	...	Hereditary Officers.

THIRD SCHEDULE—*concluded.*

(*b*).—Acts of the Supreme Council relating to the Bombay Presidency.

Year and Number.		Subject.
1838,	XVI	Judiciary.
,,	XVIII	Sureties.
,,	XIX	Coasting Vessels.
1839,	XX	Revenue.
1840,	XV	Agents of Foreign Sovereigns.
1842,	XIII	Revenue.
,,	XVII	Revenue Commissioners.
1843,	XI	Hereditary Officers.
1844,	XIX	Abolition of Town Duties.
1846,	I	Pleaders.
,,	III	Sections 1, 5 and 6—Boundary Marks.
1852,	III	Spirituous Liquors.
,,	XXI	Deputy Collectors.
1853,	XX	Pleaders.
1855,	X	Section 10—Recusant Witnesses.
1856,	VIII	Control of Gaols.
1864,	XX	Minors.

FOURTH SCHEDULE.

(*See section* 6.)

(*a*).—Bengal Regulations (Lower Provinces).

Year and Number.		Subject.
1793,	I	Perpetual Settlement.
,,	II	Collection of Land Revenue.
,,	VIII	Rules for Decennial Settlement.
,,	XI	Native laws of inheritance to Revenue-paying land.
,,	XIX	Title to lands exempt from Revenue.
,,	XXXVII	Title to lands exempt from Revenue under bádsháhí grants.
,,	XXXVIII	Section 1—Preamble: Section 2—Prohibition of loans by Covenanted Servants.
,,	XLVIII ...	Quinquennial Register of Revenue-paying lands.
1794,	III	Sections 12, 13, 16, 17, 18, 19 and 20—Arrears of Revenue.

FOURTH SCHEDULE—*continued.*

(*a*).—BENGAL REGULATIONS (LOWER PROVINCES)—*continued.*

YEAR AND NUMBER.		SUBJECT.
1797,	XV	Fees for keeping Revenue Records.
1798,	I	Conditional Sales of Land.
1799,	V	Wills and Intestacies of Natives.
1800,	VIII	Pargana Register of Lands.
1801,	I	Arrears of Revenue: Division of Joint Estates.
1804,	X	Punishment by Courts Martial of certain State offences.
1806,	IX	Passage of Troops.
,,	XVII	Sections 7 and 8—Mortgages and conditional sales.
1810,	XIX	Maintenance of Bridges, &c.; Escheats.
,,	XX	Camp-followers, Bázárs, Cantonments.
1811,	XI	Revision of jama on lands ordered to be divided.
1812,	V	Collection of Land-revenue.
,,	XI	Removal of Foreign Emigrants.
1814,	XIX	Partition of Revenue-paying Estates.
1817,	V	Hidden Treasure.
,,	XX	Section 28—Abkárí: Section 29—Criminal process in Salt and Opium Departments: Section 30, clauses 1, 2 and 5—Building forts; Collecting sepoys and stores; Encroaching on roads: Section 32—Despatches of treasure.
1818,	III	State Prisoners.
1819,	II	Resumption of Revenue-free lands.
,,	VI	Ferries.
1821,	IV	Powers of Collectors and Magistrates.
1822,	III	Boards of Land-revenue.
,,	XI	Section 36—Khás management of purchases by Government: Section 38—Non-liability of Government for errors of Courts.
1823,	VI.	Indigo Contracts.
,,	VII	Prohibition of loans to Covenanted Civil Servants.
1825,	VI	Passage of Troops.
,,	IX	Defaulting Málguzárs.
,,	XI	Alluvion and diluvion.
,,	XIII	Settlement of resumed Lákhiráj land.
,,	XIV	Authority to confirm Lákhiráj tenures: Native Grants.

FOURTH SCHEDULE—*continued.*

(*a*).—Bengal Regulations (Lower Provinces)—*concluded.*

Year and Number.			Subject.
1825,	XX ...	...	Courts Martial and Military Courts of Requests.
1827,	III ..	...	Section 5—Evidence.
„	V ...	...	Management of Estates under attachment.
1828,	III ...	...	Appeals from decisions of Revenue Authorities.
„	IV ..	...	Section 1 and section 2, clause 4—Time during which Collectors are to be considered engaged in making settlements.
1829,	I ...	..	Commissioners of Revenue and Board of Revenue.
„	XVII ...	...	Widow-burning.
1830,	V ...	...	Sections 1 and 5—Indigo Contracts.

(*b*).—Acts of the Supreme Council relating to the Lower Provinces.

Year and Number.			Subject.
1836,	X ...	...	Indigo Contracts.
„	XX ...	...	Batwáras.
„	XXI ...	...	Creating Zilas.
1838,	XI ...	...	Remuneration of Amíns effecting Partitions.
1841,	XII ...	...	Section 2—No interest on arrears of Land-revenue.
1847,	IX ...	...	Assessment of new lands.
1848,	XX ...	..	Land-revenue.
1850,	XLIV ...	...	Board of Revenue.
1853,	XIX ...	...	Section 26—Recusant witnesses.
1855,	XXXII ...	...	Embankments.[a]
1856,	XII ...	...	Civil Court Amíns.
„	XX ...	...	Chaukídárs.
„	XXI ...	...	Abkárí.
1857,	XIII ...	...	Opium.
1858,	XXXI ..	...	Settlement of Alluvion.
„	XL ...	...	Minors.
1859,	XI ...	...	Sales for Arrears of Revenue.
1860,	XXIII ...	...	Abkárí.

[a] Repealed (except as to Orissa and the Sunderbans) by Bengal Act No. VI of 1873.

FIFTH SCHEDULE.

(*See section* 7.)

(*a*).—Bengal Regulations (North-Western Provinces).

Year and Number.		Subject.
1793,	XXXVIII	Section 1—preamble: Section 2—prohibition of loans by Covenanted Servants.
1798,	I	Conditional sales of land.
1799,	V	Wills and Administration to Natives.
1804,	X	Punishment by Courts Martial of certain State Offences.
1806,	XI	Passage of Troops.
,,	XVII	Sections 7 and 8—Mortgages and conditional sales.
1810,	XIX	Maintenance and Repair of Bridges, &c.; Escheats.
,,	XX	Camp-followers, Bázárs, Cantonments.
1812,	XI	Removal of Foreign Emigrants.
1817,	V	Hidden Treasure.
1818,	III	State Prisoners.
1819,	VI	Ferries.
1822,	XI	Section 38—Non-liability of Government for errors of Courts.
1823,	VI	Indigo Contracts.
,,	VII	Prohibition of loans to Covenanted Civil Servants.
1825,	VI	Passage of Troops.
,,	XI	Alluvion and Dereliction.
,,	XX	Courts Martial and Courts of Requests.
1827,	III	Section 5—Evidence.
,,	V	Management of Estates under Attachment.
1829,	XVII	Widow-burning.
1830,	V	Sections 1 and 5—Indigo Contracts.
1831,	VI	Section 6—Sadr Adálat.
,,	XI	Sections 1, 2, 4, 5, 6, 8—Police-powers of Tahsíldárs.
1833,	IX	Deputy Collectors.

FIFTH SCHEDULE—*concluded.*

(*b.*)—ACTS OF THE SUPREME COUNCIL RELATING TO THE N. W. PROVINCES.

YEAR AND NUMBER.		SUBJECT.
1836,	X	Indigo Contracts.
,,	XXI	Creating Zilas.
1853,	XIX	Section 26—Recusant witnesses.
1854,	XVI	Police.
1856,	XII	Civil Court Amíns.
,,	XX	Chaukídárs.
1857,	XIII ...	Opium.
1858,	XL	Minors.

SIXTH SCHEDULE.

(*See sections* 2, 3, 4, 5, 6 *and* 7.)

PART I.

SCHEDULED DISTRICTS, MADRAS.

I.—In Ganjam.

(1.) The Gumsur Maliahs, including Chokapad.
(2.) The Surada Maliahs.
(3.) The Chinna Kimedi Maliahs.
(4.) The Pedda Kimedi Maliahs.
(5.) The Bodaguda Maliahs.
(6.) The Surangi Maliahs.
(7.) The Parla Kimedi Maliahs.
(8.) The Muttás of Koradá and Ronaba (otherwise called Srikarma).
(9.) The Chighatti Maliah.
(10.) The Juradá Maliah.
(11.) The Jalantrá Maliah.
(12.) The Mandasa Maliah.
(13.) The Budarasinghi Maliah.
(14.) The Kuttingia Maliah.

II.—In Vizagapatam.

(1.) The Jeypur Zamíndárí.
(2.) Golconda Hills, west of the River Boderu.
(3.) The Madugol Maliahs.
(4.) The Kasipur Zamíndárí.
(5.) The Panchipenta Maliahs.
(6.) Mondemkolla, in the Merangi Zamíndárí.
(7.) The Konda Muttá of Belgám.
(8.) The Gumma and Konda Muttás of Kurpam.
(9.) The Kottam, Rám and Konda Muttás of Pálkonda.

SIXTH SCHEDULE—*continued.*

SCHEDULED DISTRICTS, MADRAS—*concluded.*

III.—In the Godávari District.

(1.) The Bhadráchalam Táluq.
(2.) The Rákapilli Táluq.
(3.) The Rampá Country.

IV.—In the Indian Ocean.

The Laccadive Islands, including Minicoy.

PART II.

SCHEDULED DISTRICTS, BOMBAY.

I.—The Province of Sindh.
II.—The Panch Maháls.
III.—Aden.
IV.—The villages belonging to the following Mehwassi Chiefs :—

(1.) The Párví of Káthí.
(2.) The Párví of Nál.
(3.) The Párví of Singpúr.
(4.) Walwi of Gaohállí.
(5.) The Wassáwa of Chikhlí.
(6.) The Párví of Nawalpúr.

PART III.

SCHEDULED DISTRICTS, BENGAL.

I.—The Jalpáígori and Darjeeling Divisions.
II.—The Hill tracts of Chittagong.
III.—The Santhál Parganas.
IV.—The Chutiá Nágpur Division.
V.—The Maháls of Angúl and Banki.

PART IV.

SCHEDULED DISTRICTS, NORTH-WESTERN PROVINCES.

I.—The Jhánsí Division, comprising the Districts of Jhánsí, Jalaun and Lalatpur.
II.—The Province of Kumáon and Garhwál.
III.—The Terai Parganas, comprising—Bázpúr, Káshípúr, Jaspúr, Rudarpúr, Gadarpúr, Kilpúrí, Nának-Matthá and Bilherí.
IV.—In the Mirzapur District :—

(1.) The tappás of Agori Khás and South Kon in the Pargana of Agori.
(2.) The tappá of British Singrauli in the Pargana of Singrauli.

SIXTH SCHEDULE.—*continued.*

SCHEDULED DISTRICTS, NORTH-WESTERN PROVINCES—*concluded.*

(3.) The tappás of Phulwá, Dudhi and Barhá in the Pargana of Bichipár.

(4.) The portion lying to the South of the Kaimor Range.

V. The Family Domains of the Mahárájá of Benares comprising the following parganas :—

Bhadohi and Kheyra Mángror in the Mirzapur District.

Kaswá Rájá in the Benares District.

VI. The tract of country known as Jaunsar Báwar in the Dehra Dún District.

PART V.

SCHEDULED DISTRICTS, PANJÁB.

The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán, Dera Ghází Khán, Lahaul and Spiti.

PART VI.

SCHEDULED DISTRICTS, CENTRAL PROVINCES.

Chhattisgarh Zamindáris.

1. Khariár.
2. Bindrá Nowágarh.
3. Sahezpúr.
4. Gándai.
5. Silhetí.
6. Barbaspúr.
7. Thákurtolá.
8. Lohárá.
9. Gondardehí.
10. Fingeswar.
11. Pándariá.
12. Pendrá.
13. Mátín.
14. Uprorá.
15. Kendá.
16. Láphá.
17. Chhúrí.
18. Korbá.
19. Chapá.
20. Borá Sámbhar.
21. Phúljhar.
22. Kolábirá.
23. Rámpúr.

Chándá Zamindáris.

1. Ahírí.
2. Ámbágarh Chaukí.
3. Áundhí.
4. Dhanorá.
5. Dúdhmálá.
6. Gewardá.
7. Jhárápáprá.
8. Khutgáon.
9. Koráchá.
10. Kotgal.
11. Muramgáon.
12. Pánábáras.
13. Palaśgarh.
14. Rángí.
15. Sirsundí.
16. Sonsarí.
17. Chándálá.
18. Gilgáon.
19. Páwí Mutándá.
20. Pategáon.

SIXTH SCHEDULE—*concluded.*

Scheduled Districts, Central Provinces—*concluded.*

Chhindwárá Jágírdáris.

1. Haraí.
2. Chháter.
3. Gorakhghát.
4. Gorpání.
5. Baktágarh.
6. Bardágarh.
7. Pachmarhí.
8. Partábgarh.
9. Almod.
10. Sonpúr.
11. Bariám Pagárá.

PART VII.

The Chief Commissionership of Coorg.

PART VIII.

The Chief Commissionership of the Andaman and Nicobar Islands.

PART IX.

The Chief Commissionership of Ajmer and Mairwára.

PART X.

The Chief Commissionership of Assam.

PART XI.

The Hill Tracts of Arakan.

PART XII.

The Pargana of Mánpur.

PART XIII.

The Cantonment of Morar.

THE DISTRESS ACT, 1875.

CONTENTS.

PREAMBLE.

I.—Preliminary.

SECTIONS.

1. Short title.
   Commencement.
   Local extent.
2. Enactments repealed.
3. Interpretation-clause.

II.—Bailiffs and Appraisers.

4. Appointment of bailiffs and appraisers.
5. Security to be given by appointees.

III.—Issue of Distress-Warrants.

6. Application for distress-warrant.
7. Issue of distress-warrant.

IV.—Of the making of Distresses.

8. Time for distress.
9. What places bailiff may force open.
10. Property which may be seized.
11. Impounding distress.
12. Inventory.
    Notice of intended appraisement and sale.
    Copies of inventory and notice to be filed.

V.—Of Applications to discharge Distresses, and of Compensation.

13. Application to discharge or suspend warrant.
14. Claim to goods distrained made by a stranger.
15. Power to award compensation to debtor or claimant.
16. Power to transfer to High Court cases involving more than Rs. 1,000.

VI.—Appraisement and sale of Distress.

17. Appraisement.
    Notice of sale.
18. Sale.
    Application of proceeds.

SECTIONS.

VII.—Miscellaneous.

19. Costs of distresses.
20. Account of costs and proceeds.
21. Bar of distresses except under this Act.
Penalty for making illegal distresses.

THE FIRST SCHEDULE.

Forms.

THE SECOND SCHEDULE.

Enactments repealed.

ACT No. I OF 1875.

Received the Governor General's assent on the 19th January 1875.

An Act to regulate Distresses for Rents in the Presidency Towns.

FOR the purpose of regulating distresses for rents in the Towns of Calcutta, Madras and Bombay; It is hereby enacted as follows:— Preamble.

I.—Preliminary.

1. This Act may be called "The Distress Act, 1875," and it shall come into force at once. Short title. Commencement.

It extends to every place within the local limits of the ordinary original civil jurisdictions of the High Courts of Judicature at Fort William, Madras and Bombay; Local extent.

But nothing herein contained applies—

(*a*) to any rent due to Government;

(*b*) to any rent which has been due for more than twelve months before the application mentioned in section six.

2. The enactments specified in the second schedule hereto annexed are repealed to the extent mentioned in the third column of the same schedule. Enactments repealed.

All appointments made and securities given under any of the said enactments shall be deemed to be respectively made and given under this Act.

The reference to Act No. VII of 1847 made in Act XXIII of 1850, section three, shall be read as if made to this Act.

3. In this Act, "Court of Small Causes" means the Court of Small Causes for the time being established by law in Calcutta, Madras or Bombay, as the case may be. "Court of Small Causes" defined.

II.—Bailiffs and Appraisers.

4. The Judges of the Court of Small Causes may appoint four or more persons to be bailiffs and appraisers for the purpose of this Act, and may from Appointment of bailiffs and appraisers.

time to time, with the previous sanction of the Local Government, fix such remuneration for the services of such officers as the said Judges think fit, and may suspend or remove them.

Security to be given by appointees.

5. The persons so appointed shall give security to be approved by the said Judges faithfully to discharge the duties of their office, and they shall be deemed to be public servants within the meaning of the Indian Penal Code.

III.—Issue of Distress-warrants.

Application for distress-warrant.

6. Any person claiming to be entitled to arrears of rent of any house or premises to which this Act extends, or his duly constituted attorney, may apply to any Judge of the Court of Small Causes for such warrant as hereinafter mentioned.

The application shall be supported by an affidavit or affirmation to the effect of the form (marked A) in the first schedule hereto annexed.

Issue of distress-warrant.

7. The Judge may thereupon issue a warrant under his hand and seal and returnable within six days, to the effect of the form contained in the same schedule (marked B) addressed to any one of such bailiffs.

The Judge may at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same.

IV.—Of the making of Distresses.

Time for distress.

8. Every distress under this Act shall be made after sunrise and before sunset, and not at any other time.

What places bailiff may force open.

9. The bailiff directed to make the distress may force open any stable, out-house, or other building, and may also enter any dwelling-house, the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this Act:

Provided that he shall not enter or break open the door of any room appropriated for the zanáná or residence of women, which by the usage of the country is considered private.

Property which may be seized.

10. In pursuance of the warrant aforesaid the bailiff shall seize the moveable property found in or upon the house or premises mentioned in the warrant and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may in the bailiff's judgment be sufficient to cover the amount of the said rent, together with the costs of the said distress:

Provided that the bailiff shall not seize—

(*a*) things in actual use; or

(*b*) tools and implements not in use, where there is other moveable property in or upon the house or premises sufficient to cover such amount and costs; or

(*c*) the debtor's necessary wearing apparel; or

(*d*) goods in the custody of the law.

11. The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent. Impounding distress.

12. On seizing any property under section ten, the bailiff shall make an inventory of such property and shall give a notice in writing to the effect of the form in the first schedule hereto annexed (marked C) to the debtor, or to any other person upon his behalf in or upon the said house or premises. Inventory. Notice of intended appraisement and sale.

The bailiff shall, as soon as may be, file in the Court of Small Causes copies of the said inventory and notice. Copies of inventory and notice to be filed.

V.—Of Applications to discharge Distresses, and of Compensation.

13. The debtor, or any other person alleging himself to be the owner of any property seized under this Act, may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained article, and such Judge may discharge or suspend such warrant or release such article accordingly, upon such terms as he thinks just, Application to discharge or suspend warrant.

and any of the Judges of the said Court may in his discretion give reasonable time to the debtor to pay the rent due from him.

Upon any such application, the costs attending it and attending the issue and execution of the warrant shall be in the discretion of the Judge, and shall be paid as he directs.

14. If any claim be made to, or in respect of, any property seized under this Act, or in respect of the proceeds or value thereof, by any person not being the debtor, the Chief Clerk of the Court of Small Causes, upon the application of the bailiff who seized the property, may issue a summons calling before the Court the claimant and the person who obtained the warrant. Claim to goods distrained made by a stranger.

And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed, and any Judge of the High Court, on proof of the issue of such summons and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons.

And a Judge of the Court of Small Causes shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as he thinks fit;

and such order shall be enforced as if it were an order made in a suit brought in such Court.[a]

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[a] This is intended as a substitute for a suit in replevin. Compare Act No. IX of 1850, s. 88.

The procedure in Courts of Small Causes in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Courts.

Power to award compensation to debtor or claimant.

15. In any case under section thirteen or section fourteen the Judge by whom the case is heard may award such compensation by way of damages to the applicant or claimant (as the case may be) as the Judge thinks fit,

and may for that purpose make any enquiry he thinks necessary;

and the order of the Judge awarding or refusing such compensation shall bar any suit in respect of injury caused by the distress.

Power to transfer to High Court cases involving more than Rs. 1,000.

16. In any application under section thirteen or any claim under section fourteen, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or claimant may apply to the High Court to transfer the case to itself, and the High Court on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by a Judge of the Court of Small Causes, and may make such order therein as the High Court thinks fit.

Every application under this section shall be made within seven days from the date of the seizure of the subject-matter in dispute.

In granting applications under this section, the High Court may impose such terms as to payment of, or giving security for, costs or otherwise as it thinks fit.

The procedure in cases transferred under this section shall conform as far as may be to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction; and orders made under this section may be executed as if they were made in the exercise of such jurisdiction; and every such order awarding or refusing compensation shall bar any suit in respect of injury caused by the distress which gave rise to the case wherein such order was made.

VI.—Appraisement and Sale of Distress.

Appraisement.

Notice of sale.

17. In default of any order to the contrary by a Judge of the Court of Small Causes, or by the High Court, any two of the said bailiffs may, at the expiration of five days from a seizure of property under this Act, appraise the property so seized, and give the debtor notice in writing to the effect of the form in the first schedule hereto annexed (marked D).

The bailiffs shall file in the same Court a copy of every notice given under this section.

18. In default of any such order to the contrary, the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall on realizing the proceeds pay over the amount thereof to the Chief Clerk of the Court of Small Causes, and such amount shall be applied first in payment of the costs of the said distress and then in satisfaction of the debt; and the surplus, if any, shall be returned to the debtor: Sale. Application of proceeds.

Provided that the debtor may direct that the sale shall take place in any other manner, first giving security for any extra costs thereby occasioned.

VII.—Miscellaneous.

19. No costs of any distress under this Act shall be taken or demanded except those mentioned in the part of the first schedule hereto annexed (marked E): Costs of distresses.

The Judges of the Court of Small Causes may apply the sum so raised as costs towards the payment of the contingent charges and remuneration of the said bailiffs, as appears to the said Judges expedient.

20. The Chief Clerk of the Court of Small Causes shall keep a book in which all sums received as costs upon distresses made under this Act, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses shall be duly entered. Account of costs and proceeds.

He shall also enter in the said book all sums realized by sale of the property distrained and paid over to landlords under the provisions of this Act.

21. No distress shall be levied for arrears of rent, except under the provisions of this Act; Bar of distresses except under this Act.

And any person, except a bailiff appointed under section four, levying or attempting to levy any such distress shall, on conviction before a Magistrate of Police, be liable to be punished by fine not exceeding five hundred rupees and imprisonment for a term not exceeding three months, in addition to any other liability he may have incurred by his proceedings. Penalty for making illegal distresses.

THE FIRST SCHEDULE.

A.

[*See section* 6.]

In the Court of Small Causes for

*A. B.*_____(Plaintiff).

versus

*C. D.*_____(Defendant).

A. B. of_____, in the town of_____, maketh oath [*or* affirms] and saith that *C. D.*_____, of_____, is justly indebted to_____in the sum of Rs._____for arrears of rent of the

house and premises No. _____, situated at _____, in the town of _____, due for _____ month, to wit from _____ to _____, at the rate of Rs. _____ per mensem.

Sworn [*or* Affirmed] before me the _____ day of _____ 187 .

Judge.

B.

[*See section* 7.]

In the Court of Small Causes for

FORM OF WARRANT.

I hereby direct you to distrain the moveable property of *C. D.*, on the house and premises situate at No. _____, in the town of _____, for the sum of _____ Rs. and the costs of the distress, according to the provisions of The Distress Act, 1875. Dated day of

(Signed and sealed)

To *E. F., Bailiff and Appraiser.*

C.

[*See section* 12.]

In the Court of Small Causes for

FORM OF INVENTORY AND NOTICE.

(State particulars of property seized.)

Take notice that I have this day seized the moveable property contained in the above inventory for the sum of _____ Rs., being the amount of _____ months' rent due to *A. B.* at _____ last, and that unless you pay the amount thereof, together with the costs of this distress, within five days from the date hereof, or obtain an order from one of the Judges of the Court of Small Causes to the contrary, the same will be appraised and sold pursuant to the provisions of The Distress Act, 1875. Dated the day of 187 .

(Signed) *E. F.,*
Bailiff and Appraiser.

To *C D.*

D.

[*See section* 17.]

In the Court of Small Causes for

Take notice that we have appraised the moveable property seized on the day of _____, under the provisions of The Distress Act, 1875, of which a notice and inventory were duly served upon you [*or* upon _____ on your behalf, *as the case may be*] under date the _____, and that the said property will be sold on the _____ [*two clear days at least after the date of the notice*] at _____ _____ pursuant to the provisions of the said Act. Dated this ____ day of _____ 187—.

(Signed) *E. F.*
G. H.
Bailiffs and Appraisers.

To *C. D.*

E.

[*See section* 19.]

In the Court of Small Causes for

SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR HOUSE RENT.

Sums sued for.			Affidavit and warrant to distrain.			Order to sell.			Commission.			Total.		
Rs.		Rs.	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.
1	and under	5	0	4	0	0	8	0	0	8	0	1	4	0
5	„	10	0	8	0	0	8	0	1	0	0	2	0	0
10	„	15	0	8	0	0	8	0	1	8	0	2	8	0
15	„	20	0	8	0	1	0	0	2	0	0	3	8	0
20	„	25	0	12	0	1	0	0	2	8	0	4	4	0
25	„	30	1	0	0	1	0	0	3	0	0	5	0	0
30	„	35	1	0	0	1	0	0	3	8	0	5	8	0
35	„	40	1	0	0	1	8	0	4	0	0	6	8	0
40	„	45	1	4	0	2	0	0	4	8	0	7	12	0
45	„	50	1	8	0	2	0	0	5	0	0	8	8	0
50	„	60	2	0	0	2	0	0	6	0	0	10	0	0
60	„	80	2	8	0	2	8	0	6	8	0	11	8	0
80	to	100	3	0	0	3	0	0	7	0	0	13	0	0
Upwards of Rs. 100... ...			3	0	0	3	0	0	7 per centum					

The above scale is intended to include all expenses, except in suits where the tenant disputes the landlord's claim, and witnesses have to be subpœnaed, in which case each subpœna for sums under Rs. 40 must be paid for at four annas each, and twelve annas above that amount; and also where peons were kept in charge of property distrained, four annas per day must be paid per man.

THE SECOND SCHEDULE.

I.—STATUTES.

Year and Chapter.		Subject.	Extent of repeal.
52 Hen. 3,	c. 1	Distress	The whole.
	c. 3	Resisting replevins	Ditto.

I.—STATUTES—*continued.*

Year and Chapter.	Subject.	Extent of repeal.
52 Hen. 3, c. 4	Distress	The whole.
c. 15	Ditto	Ditto.
c. 21	Replevin	Ditto.
13 Ed. 1, c. 2	Replevins	Ditto.
c. 37	Distress to be by bailiffs	Ditto.
Les Estatuz del Eschekere, between c. 13 and c. 14 of 17 Edw. 2.	Distresses	Ditto.
1 & 2 Phil. & M., c. 12	Impounding distresses	Ditto.
17 Char. 2, c. 7	Distresses	Ditto.
2 Wm. & Mary, c. 5	Sale of distresses	Ditto.

II.—ACTS.

Number and Year.	Subject.	Extent of repeal.
VII of 1847 ...	Distresses for small rents in Calcutta ...	The whole.
IX of 1850 ...	Extension of Act VII of 1847 .	Section eighty-nine.
XXVI of 1864 ...	Extending jurisdiction of Presidency Small Cause Courts.	Section four.

THE INDIAN MERCHANT SHIPPING ACT, 1875.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
   Extent.
2. [*Repealed.*]

CHAPTER II.

INVESTIGATIONS INTO LOSSES OF SHIPS AND CHARGES AGAINST MASTERS, MATES OR ENGINEERS.

SECTIONS.

3. Notice of accidents to be given to Local Government.
4. Power to appoint special Court of Enquiry.
5. Courts authorized to investigate charges against Masters, &c.
Assessor.
6. Communication to Court of grounds for charging Master, &c., with incompetency, &c.
7. Communication of grounds of charge to certificate-holder.
8. Powers of special Court.
9. Procedure on discovery in course of investigation of grounds for charging with incompetency, &c.
10. Powers of Court in making investigation.
11. Report by Court to Local Government.
12. Statement of decision in open Court.
13. Transmission of report and certificate to Board of Trade.
14. Preliminaries to cancellation or suspension.
15. Power to arrest witnesses and cause entry and detention of vessels.
16. Power to commit for trial.
Power to bind over persons to give evidence.
Depositions.
17. Chapter II applied to charges against holders of certificates from Local Government.

CHAPTER III.

SUSPENSION AND CANCELLATION OF CERTIFICATES GRANTED BY LOCAL GOVERNMENTS.

18. Local Government may suspend or cancel certificates—
(*a*) after investigation under this Act;
(*b*) after enquiry under Merchant Shipping Act, 1854, or by Naval Court;
(*c*) after supersession;
(*d*) after conviction of any offence.
19. Master, &c., to deliver up certificate.
20. Report to other Local Governments.
21. Report to Board of Trade.
22. Power to revoke cancellation or suspension.
Power to grant new certificate.
23. Saving of powers conferred on certain Admiralty Courts.
Exercise of such powers by chief criminal Courts in Indian ports.

CHAPTER IV.

AGREEMENTS WITH SEAMEN.

24. Masters to enter into agreements with seamen.
25. Form and contents of agreement.

SECTIONS.

26. Provision where lascars are shipped.
27. Forms for British or Colonial ships.

CHAPTER V.

MISCELLANEOUS.

28. Sections 3 to 27 to be taken as part of Act I of 1859.
29. Provisions as to examinations, &c., of Masters not to apply to certain ships.
30. Amendment of Act X of 1841, sections 2, 15, 17 and 23.
31. Powers of Pilot Court.

ACT No. IV OF 1875.

Received the Governor General's assent on the 9th February 1875.

An Act for the further amendment of Act No. I of 1859, and for other purposes.

Preamble.

WHEREAS Act No. I of 1859 (*for the amendment of the law relating to Merchant Seamen*), section one hundred, provides that, in the cases of loss, abandonment, damage, or casualty therein mentioned, it shall be lawful for the Local Government, if a formal investigation appears to it to be requisite or expedient, to appoint two persons to make the same, and declares that one of such persons shall be a Magistrate acting in or near the place where the investigation is made, and that the other may be any person conversant with maritime affairs: And whereas it is expedient in many cases that such investigations shall be made by persons more in number and of more varied qualifications:

And whereas it is also expedient to provide efficient means for enforcing the attendance of witnesses in such investigations and in trials under Act No. XII of 1859 (*to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty*);

And whereas it is expedient to repeal Act No. XV of 1863 (*to amend Act I of* 1859) and to re-enact certain of its provisions with the amendments hereinafter appearing:

And whereas it is provided by Act No. X of 1841, sections two, fifteen, seventeen and twenty-three, that the persons guilty of the offences therein respectively mentioned shall be liable upon conviction by information by the Advocate General to the penalties therein respectively provided:

And whereas it is expedient to render the said penalties recoverable otherwise than on information by the Advocate General;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Indian Merchant Shipping Act, 1875;" It extends to the whole of British India. Short title. Extent.

2. [*Repealed by Act No. XII of* 1876.]

CHAPTER II.

INVESTIGATIONS INTO LOSSES OF SHIPS AND CHARGES AGAINST MASTERS, MATES OR ENGINEERS.

3. In any of the cases following (namely):— Notice of accidents to be given to Local Government.

(*a*) whenever any ship is lost, abandoned or materially damaged on or near the coasts of India;

(*b*) whenever any ship causes loss or material damage to any other ship on or near such coasts;

(*c*) whenever by reason of any casualty happening to or on board of any ship on or near such coasts, loss of life ensues;

(*d*) whenever any such loss, abandonment, damage or casualty happens elsewhere to or on board any ship registered at any port or place in India, under the Merchant Shipping Act, 1854, or under Act X of 1841,

the master, pilot, harbour-master, or other person in charge of the ship, or, in cases under clause (*b*) of this section, of each ship, at the time of the loss, abandonment, damage or casualty, or, where any ship above referred to arrives in British India, the person then in charge of her, shall, on arriving in British India, give immediate notice of such loss, abandonment, damage or casualty to the nearest Magistrate, or, if he arrive at any port, then to such officer as the Local Government appoints in this behalf.

Any person bound to give notice under this section and wilfully failing to give the same shall be liable to fine not exceeding five hundred rupees and, in default of payment, to simple imprisonment for a term which may extend to three months.

The Magistrate or officer receiving such notice shall without delay communicate the same to the Local Government.

4. If in any such case a formal investigation appears to the Local Government to be requisite or expedient, the Local Government (whether such notice Power to appoint

special Court of Enquiry.

be given or not) may appoint a special Court, consisting of not less than two nor more than four persons, to make such investigation, and may fix the place for making the same.

One of such persons shall be a Magistrate acting in or near the place where the investigation is made, another shall be some person conversant with maritime affairs. The other or others (if any) shall be conversant with either maritime or mercantile affairs.

Courts authorized to investigate charges against Masters, &c.

5. Every Court having admiralty jurisdiction in India, and the principal Court of ordinary criminal jurisdiction at every port of British India where there is no Court having admiralty jurisdiction, is hereby authorized, at the instance of the Local Government, or of such officer as the Local Government may have empowered in this behalf, [a] to investigate charges of incompetency or misconduct on the part of any Master, Mate or Engineer of any ship, who holds a certificate granted by the Board of Trade, or as to shipwreck or other casualties affecting ships.

Assessor.

Every such Court may, if it think fit, constitute as its assessor for the purposes of the investigation any person conversant with maritime affairs and willing to act as such assessor.

Such person shall attend during the investigation and deliver his opinion in writing to be recorded on the proceedings. But the decision of the case shall rest with the Court.

Communication to Court of grounds for charging Master, &c., with incompetency, &c.

6. If the Local Government has reason to think that there are grounds for charging any Master, Mate or Engineer holding a certificate granted by the Board of Trade with incompetency or misconduct, it shall transmit a statement of such grounds to the Court making the investigation.

Communication of grounds of charge to certificate-holder.

7. If the investigation involves a charge of incompetency or misconduct against any person holding such certificate as aforesaid, the Court shall, if practicable, before commencing the investigation, cause the holder of such certificate to be furnished with a copy of the statement transmitted by the Local Government as aforesaid.

Powers of special Court.

8. For the purpose of the investigation the special Court, so far as relates to compelling the attendance and examination of witnesses and the production of documents and the regulation of the proceedings, shall have the same powers as if such investigation were a proceeding relating to an offence or cause of complaint upon which the said Magistrate has power to convict.

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[a] See *Bombay Govt. Gazette*, 16th March 1876, p. 228.

9. If, in the course of an investigation under this Act by any of the Courts hereinbefore mentioned, it appears that there are grounds for charging with incompetency or misconduct any holder of such certificate as aforesaid not so charged by the Local Government, the Court may cause a statement of such grounds to be furnished to such holder, and may then commence an investigation into such charge of incompetency or misconduct.

Procedure on discovery in course of investigation of grounds for charging with incompetency, &c.

10. For the purpose of such investigation such Court may summon the Master, Mate or Engineer to appear, and shall give him full opportunity of making a defence, either in person or otherwise,

and may summon and examine witnesses.

Powers of Court in making investigation.

11. The Court shall in all cases transmit to the Local Government a full report of the conclusions at which it has arrived.

Report by Court to Local Government.

12. If the Court decide that any such certificate as aforesaid shall be cancelled or suspended, it shall so state in open Court, at the conclusion of the case or as soon afterwards as possible.

Statement of decision in open Court.

13. When the Court decides to cancel or suspend a certificate, it shall send a full report upon the case with the evidence and the suspended or cancelled certificate through the Local Government to the Board of Trade.

Transmission of report and certificate to Board of Trade.

14. Provided that no certificate shall be cancelled or suspended—

Preliminaries to cancellation or suspension.

(*a*) unless the person holding the certificate has before the commencement of the investigation been furnished with a copy of the statement of the case upon which the investigation has been ordered ;

(*b*) if the Court be a Court of Admiralty or of ordinary criminal jurisdiction, unless the report be confirmed by the Local Government ;

(*c*) if the Court be a Court of Admiralty or of ordinary criminal jurisdiction, attended by an assessor, unless the assessor expresses his concurrence in the report.

15. If any Court making an investigation under this Act thinks it necessary for obtaining evidence that any person should be arrested, it may issue a warrant for his arrest, and may, for the purpose of effecting such arrest, authorize any officer (subject nevertheless to any general or special instructions from the Local Government) to enter any vessel.

Power to arrest witnesses and cause entry and detention of vessels.

Any officer so authorized to enter a vessel may, for the purpose of enforcing such entry, call to his aid any officers of police or customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest ; and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, section one hundred and eighty-six.

No person shall be detained by virtue of this section for more than forty-eight hours.

Power to commit for trial.

16. Whenever in course of any investigation under this Act, it appears that any person has committed an offence punishable under any law in force in British India, the Court making the investigation may (subject to such rules consistent with this Act as the High Court may from time to time prescribe) cause him to be arrested, or commit him or hold him to bail to take his trial before the proper Court; and may bind over any person to give evidence at such trial, and may for the purposes of this section exercise all the powers of a Magistrate of the first class or of a Justice of the Peace:

Power to bind over persons to give evidence.

Depositions.

And whenever in the course of such trial the testimony of any witness is required in relation to the subject-matter, any deposition previously made by him in relation to the same subject-matter before any Court making investigations under this Act shall, if authenticated by the signature of the Magistrate or presiding Judge, be admissible in evidence on proof—

(*a*) that the witness cannot be found within the jurisdiction of the Court before which the trial is held; and

(*b*) that it was made in the presence of the person accused.

A certificate by the Magistrate or presiding Judge that the deposition was made in the presence of the accused shall, unless the contrary be proved, be sufficient evidence that it was so made.

Chapter II applied to charges against holders of certificates from Local Government.

17. All the foregoing provisions of this chapter, except such as require reports to and communications with the Board of Trade, or relate to the actual cancellation or suspension of certificates, shall be applicable also to charges of incompetency or misconduct against any Master, Mate or Engineer who holds a certificate granted by any Local Government.

CHAPTER III.

Suspension and Cancellation of Certificates granted by Local Governments.

Local Government may suspend or cancel certificates—

18. The Local Government may suspend or cancel the certificate (whether of competency or service) granted by such Local Government, or by any other Local Government, to any Master, Mate or Engineer, in the following cases; (that is to say)—

(*a*) after investigation under this Act;

(*a*.) If upon any investigation made under this Act, it is reported that the loss or abandonment of, or serious damage to, any ship, or loss of life, has been caused by his wrongful act or default, or the Master, Mate or Engineer is reported to be incompetent, or to have been guilty of any gross act of drunkenness, tyranny or other misconduct;

(*b*.) If upon any enquiry made under the provisions of the Merchant Shipping Act, 1854, or the Merchant Shipping Amendment Act, 1862, or upon any enquiry made by a Naval Court constituted as is provided by any law for the time being in force, or upon any enquiry made by any Court or tribunal for the time being authorized in any British possession to enquire into charges of incompetency or misconduct on the part of Masters, Mates or Engineers of ships, it is reported that the loss or abandonment of, or serious damage to, any ship, or loss of life, has been caused by the wrongful act or default of the Master, Mate or Engineer; or that he is incompetent, or has been guilty of any gross act of drunkenness, tyranny or other misconduct: (*b*) after enquiry under Merchant Shipping Act 1854, or by Naval Court;

(*c*.) If he has been superseded by the order of any Admiralty Court, or of any Naval Court constituted as provided by the Merchant Shipping Act, 1854, or by any other law for the time being in force: (*c*) after supersession;

(*d*.) If he is shown to have been convicted of any offence which, if committed in British India, would be non-bailable, or, if committed in England, would be a felony: (*d*) after conviction of any offence.

Provided that no certificate shall be suspended or cancelled under clause (*a*) of this section unless the Local Government is satisfied that the holder of the certificate had before, or within a reasonable time after, the commencement of the investigation notice of the nature of the charge made and established against him.

The Local Government may, if it thinks the justice of the case requires it, re-issue and return any certificate which has been cancelled or suspended under this section, or shorten the time for which it has been suspended, or grant a new certificate of the same or any lower grade in place of any certificate which has been cancelled or suspended.

19. Every Master, Mate or Engineer whose certificate is cancelled or suspended under this chapter, shall deliver it to the Shipping Master, or to such other person as the Local Government which cancelled or suspended the certificate directs, and in default shall, for each offence, incur a penalty not exceeding five hundred rupees. Master, &c., to deliver up certificate.

20. If the Local Government which cancels or suspends a certificate of a Master, Mate or Engineer is not the Local Government that granted the same, the Local Government so cancelling or suspending the certificate shall report the proceedings, and the fact of cancelment or suspension, to the Local Government which granted such certificate. Report to other Local Governments.

21. Every Local Government cancelling or suspending under this chapter the certificate of a Master, Mate or Engineer shall, as soon as may be practi- Report to Board of Trade.

cable, report to the Board of Trade the fact of such cancellation or suspension.

Whenever it is reported to the Local Government that the loss or abandonment of, or serious damage to, any ship has been caused by the wrongful act or default of a Master, Mate or Engineer holding a certificate from the said Board, or that such Master, Mate or Engineer is incompetent or has been guilty of any gross act of drunkenness, tyranny or other misconduct, the Local Government, if it concur in such report, shall send a copy of the same to the Board of Trade.

Power to revoke cancellation or suspension.

Power to grant new certificate.

22. Any Local Government may at any subsequent time revoke any order of cancelment or suspension which it may have made under this Act, or grant to any person whose certificate it has cancelled under this Act, a new certificate of the same or of any other grade.

Notice of every revocation and of every grant under this section shall, as soon as may be practicable, be reported to the Board of Trade.

Saving of powers conferred on certain Admiralty Courts.

23. Nothing in this Act affects the powers conferred by section two hundred and forty of the Merchant Shipping Act, 1854, or by section eighty of the said Act I of 1859, on Courts having admiralty jurisdiction in India.

Exercise of such powers by chief criminal Courts in Indian ports.

The said powers may be exercised by the principal Court of ordinary criminal jurisdiction at any port in India where there is no Court having admiralty jurisdiction, if the Master, Mate or Engineer has received his certificate from any Local Government.

CHAPTER IV.

Agreements with Seamen.

Masters to enter into agreements with seamen.

24. The Master of every ship, except ships of a burden not exceeding three hundred tons employed only in the Home-trade, shall enter into an agreement with every seaman whom he carries to sea from any port in India as one of his crew, in the manner hereinafter mentioned.

Form and contents of agreement.

25. Every such agreement shall be in a form sanctioned by the Governor General in Council, and shall be dated at the time of the first signature thereof, and shall be signed by the Master before any seaman signs the same, and shall contain the following particulars as terms thereof; (that is to say)—

(*a*) either the nature and, as far as practicable, the duration of the intended voyage or engagement, or the maximum period of the voyage or engagement and the places or parts of the world, if any, to which the voyage or engagement is not to extend;

(*b*) the number and description of the crew, specifying how many are engaged as sailors;

(*c*) the time at which each seaman is to be on board or to begin work;

(*d*) the capacity in which each seaman is to serve;

(*e*) the amount of wages which each seaman is to receive;

(*f*) a scale of the provisions which are to be furnished to each seaman; and

(*g*) any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which have been sanctioned by Government as regulations proper to be adopted, and which the parties agree to adopt.

And every such agreement shall be so framed as to admit of stipulations to be adopted at the will of the master and seamen in each case (not being inconsistent with the provisions of this Act), as to advance of wages and supply of warm clothing, and may contain any other stipulations which are not contrary to law.

Provision where lascars are shipped.

26. When it is agreed that the service of any lascar or other Native seaman shall end at any port not in India, the agreement shall, in addition to the particulars specified in section twenty-five, contain stipulations for providing for him fit employment on board some other vessel bound to the port at which he was shipped, or such other port as may be agreed on, or for providing for him a passage to some such port as aforesaid free of charge, or on such other terms as may be agreed on; and every such stipulation shall be signed by the owner of the vessel or by the Master on his behalf.

EXPLANATION:—In this section the word 'seaman' includes also a Native of India carried to sea from any port in India as one of the crew of a ship.

Forms for British or Colonial ships.

27. If the Master of any ship belonging to the United Kingdom or any British possession has an agreement with his crew, made in due form according to the law of the place to which such ship belongs, or in which her crew were engaged, and engages a single seaman in any port in India, such seaman may sign the agreement so made, and it shall not be necessary for him to sign an agreement under this Act.

CHAPTER V.

MISCELLANEOUS.

Sections 3 27 to be taken as part of Act I of 1859.

28. Sections three to twenty-seven (both inclusive) shall be read with and taken as part of the said Act No. I of 1859.

Provisions as to examinations, &c., of Masters not to apply to certain ships.

29. Sections nine to sixteen (both inclusive) of the said Act No. I of 1859 shall not apply to ships registered under the said Act No. X of 1841 and trading between ports in India and the coasts of Arabia, when such ships are navigated and manned exclusively by Arabs, lascars, or other Asiatic masters and seamen.

Amendment of Act X of 1841, secs. 2, 15, 17 and 23.

30. In the said sections two, fifteen, seventeen and twenty-three of the said Act No. X of 1841, for the words "on information in any Court of Her Majesty or the East India Company by the Advocates General of the respective Presidencies," "by information as aforesaid," "on information as aforesaid," "upon information as aforesaid," in each of the places where they occur, the following words shall be substituted (namely) :—"on conviction before a Justice of the Peace or a Magistrate of the first class."

Powers of Pilot Court.

31. The Court conducting a trial under the said Act No. XII of 1859, shall have the same powers to compel the attendance and examination of witnesses as are conferred by this Act on Courts making investigations under section four.

ACT No. V of 1875.

Received the Governor General's assent on the 9th February 1875.

An Act to remove doubts as to the rights and liabilities of certain Native Soldiers. [a]

Preamble.

WHEREAS doubts have arisen as to the rights and liabilities of certain Native Soldiers who have been enrolled without having been attested, and it is expedient to remove such doubts ; It is hereby enacted as follows :—

Validation of enlistment of certain Native soldiers.

1. Every person who has for the space of six months been in the receipt of military pay and been borne on the rolls of any Regiment, Corps, Depôt, Ordnance Establishment, or Department of Her Majesty's Indian Army (of which the last pay-statement, if produced, shall be evidence), shall be deemed to have been duly enlisted, enrolled and attested, and shall not be entitled to claim his discharge on the ground of illegality or irregularity in his enlistment, enrolment or attestation, or on any other ground save such as may be recognised by the orders and customs of the service.

[a] Framed on the model of the Mutiny Act, s. 59.

THE INLAND CUSTOMS ACT, 1875.

CONTENTS.

PREAMBLE.

CHAPTER I.—PRELIMINARY.

SECTIONS.

1. Short title.
   Commencement.
   Local extent.
   Power to extend Act.
2. [*Repealed.*]
3. Interpretation-clause.

CHAPTER II.—OF THE IMPORT OF SALT AND EXPORT OF SUGAR.

4. Regulation of the import of salt, and export of sugar.
5. Power to levy duties.
6. Power to define a customs-zone and establish a customs-line.
   'Customs-officer.'
   'Customs-zone.'
   'Customs-line.'
7. Effect of establishing a customs-zone and customs-line.
   (*a.*) Salt when imported.
   (*b.*) Sugar when exported.
   (*c.*) Possession of salt within customs-zone.
   (*d.*) Traffic crossing customs-line.
8. Levy of salt-duty in Central Provinces.
9. Power to regulate collection of duties and import and export of goods.

CHAPTER III.—OF THE MANUFACTURE OF SALT AND REFINING OF SALTPETRE.

10. Power of Governor General in Council
    (*a*) to regulate manufacture and refining of salt and saltpetre;
    (*b*) to fix fees for licenses;
    (*c*) to impose a duty on manufacture of salt;
    (*d*) to reduce or remit duties;
    (*e*) to regulate possession of salt in vicinity of saltpetre-manufactories;
    (*f*) to regulate possession of salt in vicinity of places where salt is manufactured.

CHAPTER IV.—OF OFFENCES AGAINST THE INLAND CUSTOMS REVENUE.

11. Penalty for contravention of Act or rules.
12. Punishment on second and subsequent convictions.

SECTIONS.

13. Charge to be preferred by customs-officer.
Limitation of time for complaint.
Jurisdiction.
14. Confiscation of articles in respect of which offence committed.
15. Power to levy additional duty as a penalty.
16. Punishment for connivance at offences mentioned in section 11.

CHAPTER V.—OF THE POWERS OF STOPPAGE, SEIZURE, SEARCH AND ARREST.

17. Power to detain suspected person and to seize goods liable to confiscation.
18. Power to arrest.
19. Power to enter and search place of illicit manufacture.
20. Failure of police officer to attend.
21. Report of arrest, seizure or search.
22. Procedure in respect of articles seized.
23. Procedure on detainer of article subject to additional duty.
24. Procedure in respect of person arrested.
25. Officers of police and land-revenue to assist customs-officers.
26. Vexatious search, seizure, &c., by customs-officer.
27. Power to regulate seizures and disposal of things seized.

CHAPTER VI.—MISCELLANEOUS.

28. Power to prohibit import, export, and transit of salt or sugar.
29. Further matters for which Governor General may make rules.
30. Publication of rules.
31. Power of Local Government to confer powers of Collector and customs-officers.
32. Saving of existing duties on salt and sugar.
33. Existing rules.
Existing customs-line.

ACT No. VIII OF 1875.

Received the Governor General's assent on the 2nd March 1875.

An Act for regulating Inland Customs Duties on Salt and Sugar, and for other purposes.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the levy of inland customs-duties on salt and sugar, and to the import of salt, the export of sugar, and the manufacture of salt and saltpetre, into, from and in the North-Western Provinces, the Panjáb, Oudh and the Central Provinces; It is hereby enacted as follows:—

CHAPTER I.—PRELIMINARY.

Short title. Commencement.

1. This Act may be called "The Inland Customs Act, 1875:" and shall come into force on the passing thereof.

This section, section two, and so much of this Act as refers to offences against any of its provisions or against any rules made hereunder, extend to the whole of British India: Local extent.

The rest of this Act extends to the territories for the time being respectively subject to the Lieutenant-Governors of the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh and the Central Provinces;

And any portion of this Act other than the portions specified in the second clause of this section, may be extended, by order of the Governor General in Council published in the *Gazette of India*, to any part of British India other than the said territories. Power to extend Act.

2. [*Repealed by Act No. XII of* 1876.]

3. In this Act, unless there be something repugnant in the subject or context— Interpretation-clause.

"the said territories" means the territories mentioned in the third clause of the first section: "The said territories."

"Collector" means a Collector or Assistant Commissioner of Inland Customs, and includes any person invested by the Local Government with the powers of a Collector under this Act: "Collector."

"Customs-officer" means any officer of Inland Customs, and includes any person invested by the Local Government with any of the powers of a customs-officer under this Act: "Customs-officer."

"Sugar" includes also saccharine produce, sweetmeats and all other articles of which sugar forms a principal ingredient: "Sugar"

"Saltpetre" includes rasí, sajjí, and all other substances manufactured from saline earth, and *khárí-nún*, or Glauber's salt, and every form of sulphate or carbonate of soda; and "Saltpetre."

"Manufacture of salt" includes the separation or purification of salt obtained in the manufacture of saltpetre, the separation of salt from earth or other substance so as to produce alimentary salt, and the excavation or removal of natural saline deposits or efflorescence. "Manufacture of salt."

Chapter II.—Of the Import of Salt, and Export of Sugar.

4. No salt shall be imported into the said territories, and no sugar shall be exported therefrom, except subject to the provisions, payments and rules prescribed by or under this Act. Regulation of the import of salt, and export of sugar.

Power to levy duties.

5. The Governor General in Council may from time to time by rule order the levy of duties not exceeding the following :—

	Per maund of three thousand two hundred tolas.
(*a*). On salt imported into the said territories	Three rupees,
(*b*). On refined sugar exported from the said territories	One rupee,
(*c*). On unrefined sugar exported from the said territories	Six annas ; [a]

and in calculating the amount of any such duty, fractions of quarter maunds may be reckoned as quarter maunds.

The Governor General in Council may from time to time reduce or remit any duty imposed under this section.

The Governor General in Council may, for the purposes of this section, define by rule what shall be deemed refined sugar and what shall be deemed unrefined sugar.

Power to define a customs-zone and establish a customs-line.

6. In order to facilitate the collection of duties imposed under section five, the Governor General in Council may by rule define a zone of country not exceeding fifteen miles in breadth along any portion of the frontier of the said territories, and at such distance within the frontier as he deems expedient,

and may extend such zone so as to include any portion of a railway or canal or navigable river entering the same, and the place where dutiable goods are loaded or unloaded into wagons or boats for the purpose of entering or leaving the zone,

and may within such zone establish a chain of customs-posts extending along such zone.

And the establishment of such chain shall be deemed a public purpose within the meaning of the Land Acquisition Act, 1870.

"Customs-zone." "Customs-line."

A zone of country defined, and a chain of customs-posts established, under this section, are hereinafter termed respectively a "customs-zone" and a "customs-line."

Effect of establishing a customs-zone and line. Salt when imported.

7. When a customs-zone has been defined and a customs-line established under section six along any portion of the frontier of the said territories, the following results shall ensue (namely)—

(*a*) salt crossing such portion of the frontier shall be deemed to have been imported when it enters the customs-zone, and not before :

[a] In exercise of this power, the Governor General in Council has ruled that a duty of six annas per maund of 3,200 tolas shall be levied on all unrefined sugar exported across the Inland Customs line from the Central Provinces, provided that no such duty shall be levied on sugar exported to the Presidency of Bombay.—Revenue, Agriculture and Commerce Department Notification No. 179, dated 9th June 1875.—*Gazette of India*, 12th June 1875, p. 312.

(*b*) sugar shall be deemed to be exported when it is brought within half a mile of the inner face of the customs-line, and not before : Sugar when exported.

(*c*) the Governor General in Council may by rule prohibit any person absolutely, or subject to such conditions as the Governor General in Council thinks fit, from having in his possession any salt within the limits of the customs-zone : Possession of salt within customs-zone.

(*d*) the Governor General in Council may, by notification or by the erection of a barrier or otherwise, prohibit or prevent the passage of traffic of any description across the customs-line, except at such points as the Commissioner of Inland Customs may determine, Traffic crossing customs-line

and may by rule control and regulate the passage of traffic at such points, and provide for the searching of all persons and things crossing, or being taken across, the customs-line.

8. The Governor General in Council may by rule direct that the duty leviable under section five, clause (*a*), shall be levied by way of a mileage-rate on— Levy of salt-duty in Central Provinces.

(*a*) salt imported from the Presidency of Bombay into any part of the territories under the administration of the Chief Commissioner of the Central Provinces, and

(*b*) salt which, having been so imported, is afterwards moved from one place to another :

And may in like manner fix, for the purposes of this section, the rate per maund per mile which shall be so levied.

9. The Governor General in Council may by rule prescribe the manner, time, and place in and at which, and the persons by whom, the duties leviable under this chapter shall be collected, and the dutiable goods be permitted to be imported and exported. Power to regulate collection of duties and import and export of goods.

When the rules made under this section allow dutiable goods to be imported or exported without prepayment of duty, all duty payable on such goods so imported or exported shall be deemed to be a first charge on the same, and such goods may be stopped and detained by a customs-officer until the duty is paid.

If such duty is not paid within such period as may be fixed by such rules, the goods in respect of which such duty is payable may be sold by public auction, and the proceeds of the sale shall be applied, first, in discharging the duty payable in respect of such goods, and then in defraying freight and other charges to which they are liable, and the surplus (if any) shall, if not claimed by the owner within two months, be forfeited to Her Majesty.

CHAPTER III.—OF THE MANUFACTURE OF SALT AND REFINING OF SALTPETRE.

Power of Governor General in Council to regulate manufacture and refining of salt and saltpetre;

10. The Governor General in Council may from time to time by rule—

(*a*) prohibit absolutely, or subject to such condidions as he thinks fit, the manufacture of salt or the manufacture or refining of saltpetre throughout the whole or any portion of the said territories;[a]

to fix fees for licenses;

(*b*) fix fees for the following licenses not exceeding in the case of each such license the amount hereinafter mentioned:—

	Rs.
License to manufacture saltpetre	2
License to manufacture and refine saltpetre and to separate and purify salt in the process of such manufacture and refining	100
License to manufacture *khárí-nún*	25
License to manufacture other saline substances	2;

to impose a duty on manufacture of salt;

(*c*) impose a duty not exceeding three rupees per maund of three thousand two hundred tolahs on salt manufactured in the said territories, and determine the manner, time, and place in and at which, and the persons by whom, such duty shall be collected;

to reduce or remit duties;

(*d*) reduce or remit any duty so imposed;

to regulate possession of salt in vicinity of saltpetre-manufactories;

(*e*) define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or on behalf of Government, or of any manufactory and its appurtenances in or on which saltpetre is manufactured or refined, and regulate the possession, storage and sale of salt within such area;

to regulate possession of salt in vicinity of places where salt is manufactured.

(*f*) define an area round any other place in which salt is manufactured, and regulate the possession, storage and sale of salt within such area.

CHAPTER IV.—OF OFFENCES AGAINST THE INLAND CUSTOMS REVENUE.

Penalty for contravention of Act or rules.

11. Whoever commits any of the following offences—

(*a*) does anything in contravention of this Act or of any rule made hereunder;

(*b*) evades payment of any duty or charge payable under this Act or any such rule; or

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[a] In exercise of this power, the Governor General in Council has prohibited the manufacture of salt and the manufacture and refining of saltpetre throughout the whole of the territories mentioned in section 1, cl. 3 *supra*, except in such places and subject to such conditions in and subject to which such manufacture and refining were lawful on the 1st March 1875, Revenue, Agriculture and Commerce Department Notification No. 201, dated 18th June 1875.—*Gazette of India*, 19th June 1875, p. 324.

(*c*) attempts to commit or abets within the meaning of the Indian Penal Code the commission of any of the offences mentioned in clauses (*a*) and (*b*) of this section,

shall for every such offence be punishable with a fine not exceeding five hundred rupees, or with imprisonment for a term not exceeding six months, or with both,

and the convicting Magistrate, on the application of the Collector or customs-officer, may declare to be confiscated all works, materials, and implements constructed or prepared for the purpose of manufacturing or refining salt or saltpetre contrary to the provisions of this Act or any such rule.

Punishment on second and subsequent convictions.

12. Any person convicted of an offence under section eleven, after having been previously convicted of an offence under that section or any enactment hereby repealed,

shall be punished with imprisonment which may extend to six months, in addition to the punishment which may be inflicted for a first offence under section eleven,

and every such person shall, upon every subsequent conviction of an offence under section eleven, be liable to imprisonment for a term which may extend to six months, in addition to any term of imprisonment to which he was liable at his last previous conviction.

Charge to be preferred by customs-officer.

13. A charge of an offence under section eleven shall not be entertained except on the complaint of the Collector or other customs-officer not inferior in rank to a Sub-Assistant Patrol,

Limitation of time for complaint.

and no such complaint shall be admitted unless it be preferred within six months after the commission of the offence to which it refers.

Jurisdiction.

An offence under section eleven shall be tried by a Magistrate exercising powers not less than those of a Magistrate of the second class.

Confiscation of articles in respect of which offence committed.

14. All salt, sugar, or saltpetre in respect of which any offence mentioned in section eleven has been committed, together with the vessels, packages, or coverings in which such salt, sugar, or saltpetre is contained, and the animals and conveyances used in carrying it, shall be liable to confiscation.

When the article seized exceeds five sers in weight, the Commissioner of the Division may, if satisfied on the report of any customs-officer, or on such enquiry as he deems fit to make, that such offence has been committed, declare such article to be confiscated, or impose such lesser penalty in lieu of confiscation as to him may seem fit.

If the quantity seized does not exceed five sers, the Collector shall possess the same powers in regard to its disposal which by this section are con-

ferred on Commissioners of Division in regard to quantities exceeding five sers, and may also confiscate the vessel, package or covering in which such article is contained.

Whenever a Commissioner of Division declares uuder this section any article to be confiscated, he may also declare to be confiscated any vessel, package or covering in which such article is contained, and any animal or conveyance used in carrying it.

Power to levy additional duty as a penalty.

15. The Governor General in Council may from time to time by rule direct that any customs-officer not inferior in rank to a Sub-Assistant Patrol, if satisfied in such manner as such rule may prescribe that any offence mentioned or referred to in section eleven has been committed in respect of any dutiable article, shall, instead of preferring a complaint before a Magistrate or instituting proceedings with a view to confiscation, impose as a penalty an additional duty on such article not exceeding the duty paid or leviable thereon under chapter II of this Act.

The imposition of every such penalty shall be at once reported, if the article in respect of which the offence has been committed exceeds five sers, to the Commissioner of Division, and if such article does not exceed five sers, to the Collector,

and shall require the sanction of the Commissioner or Collector to whom it is so reported.

Punishment for connivance at offences mentioned in section 11.

16. All zamíndárs and other proprietors of land or their agents, who wilfully connive at any offence mentioned or referred to in section eleven, shall for every such offence be punishable by any Magistrate exercising powers not less than those of a Magistrate of the second class, with fine not exceeding five hundred rupees, or with imprisonment for a term not exceeding six months, or with both.

Chapter V.—Of the Powers of Stoppage, Seizure, Search and Arrest.

Power to detain suspected person and to seize goods liable to confiscation.

17. Any customs-officer may stop and detain any person whom he has reasonable ground to suspect of being liable to punishment under this Act;

and may seize any salt or sugar in respect of which there is reasonable ground to believe that any offence mentioned or referred to in section eleven has been committed or that any duty is payable, together with the vessels, packages or coverings in which such salt or sugar is contained, and the animals and conveyances used in carrying it.

Power to arrest.

18. Any customs-officer may arrest any person whom he has reasonable ground to suspect of having committed any such offence as last aforesaid.

19. Whenever any customs-officer not inferior in rank to a Sub-Assistant Patrol, has reason to believe that salt or saltpetre is being unlawfully manufactured, refined or stored, Power to enter and search place of illicit manufacture.

such officer shall first record in writing (so far as may be practicable), (*a*) the name, residence and calling of the informant (if any), (*b*) the locality and description of the house, boat or place where the officer believes the salt or saltpetre is being manufactured, refined or stored, (*c*) the name of the person for or by whom the salt or saltpetre is manufactured, refined or stored, and (*d*) the supposed quantity and description of the salt or saltpetre, with the grounds of believing the same to be unlawfully manufactured, refined or stored,

and may then summon in writing the officer in charge of the police-station within whose jurisdiction the house, boat or place to be searched is situate to attend him ;

and may then, between sunrise and sunset (but always in the presence of an officer of police not inferior in rank to a head constable), enter and search any house, boat or place in which there is reason to believe that salt or saltpetre is being so manufactured, refined or stored,

and, in case of resistance, may break open any door, and force and remove any other obstacle to such entry,

and may seize and carry away all salt and saltpetre so unlawfully manufactured, refined or stored, and all materials used in the manufacture or refinement of such salt or saltpetre,

and may also arrest the occupier of the said house, boat or place, together with all persons concerned in the manufacture or refinement or storing of such salt or saltpetre, or in the concealing thereof.

If the place so entered is an apartment in the actual occupancy of a woman, who, according to the customs of the country, does not appear in public, the officer entering the same shall be guided by the rules prescribed in the Code of Criminal Procedure, section 384.

Before conducting a search under this section, the officer conducting it shall call upon two or more respectable inhabitants (if any) of the locality in which the house, boat or place to be searched is situate, to attend and witness the search, and the search shall be made in the presence of such inhabitants (if any), and also (if practicable) of the occupant of the house, boat or place searched.

Whenever it is necessary to cause a woman to be searched, the search shall be conducted with strict regard to the habits and customs of the country.

20. Any officer in charge of a police-station, who, on application in writing made by a customs-officer to attend for any of the purposes specified in section nineteen, fails so to attend or to depute a subordinate officer not Failure of Police-officer to attend.

inferior in rank to a head constable so to attend, shall for every such offence be punished with fine not exceeding five hundred rupees.

Report of arrest, seizure or search.

21. Whenever a customs-officer under the rank of Collector arrests any person under this Act,

or seizes any article as liable to confiscation under this Act,

or enters any house, boat or place for the purpose of searching for any such article,

he shall (unless empowered under the next succeeding clause of this section), within forty-eight hours next after such arrest, seizure or entry, make a full report of all the particulars of such arrest, seizure or entry to his official superior for the information of the Collector.

Every officer making any arrest under this section, or his official superior, shall, if generally empowered to do so by the Collector, either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the discharge of such person.

And every officer of police attending any search made under section nineteen shall report the same to his official superior.

Procedure in respect of articles seized.

22. Whenever the Collector is informed of the seizure of any article exceeding five sers in quantity, as liable to confiscation under this Act, he shall, with all convenient despatch, report the circumstances of the case to the Commissioner of the Division, who may thereupon proceed under section fourteen.

If the quantity seized does not exceed five sers, he may dispose of the case himself under the said section.

Procedure on detainer of article subject to additional duty.

23. Any article in respect of which a penalty is imposed under section fifteen may be detained pending the receipt of the order of the Commissioner of the Division or Collector on the report required by the same section:

Provided that, if the owner of any article so detained deposits the amount of such penalty with, and pays all ordinary duty and charges payable on such article to, the customs-officer detaining the same, such article shall be at once released.

When an article is so detained it shall, on the receipt of the said order, be dealt with in accordance with the rules made in this behalf under section twenty-seven.

When an article has been released under the second clause of this section, and the Commissioner or Collector reduces, or declines to sanction, the penalty imposed in respect of such article, the amount refundable to the owner shall be paid to him on his applying therefor to the Collector within six months, to be computed (where the order has been made by the Commis-

sioner) from the day on which the Collector has received such order, and (where the order has been made by the Collector) from the date of such order.

When any penalty the amount of which has been deposited under the second clause of this section, is sanctioned,

or when any sum refundable under this section has not been claimed within the said period of six months,

the amount so in deposit or the sum so refundable shall be forfeited to Her Majesty unless the Commissioner of Inland Customs otherwise directs.

Procedure in respect of person arrested.

24. Whenever the Collector is informed of the arrest of any person, he shall (unless such person has been dealt with under the penultimate clause of section twenty-one), either send, with all convenient despatch, the person arrested to the Magistrate having jurisdiction to deal with the case, or order the immediate discharge of such person.

Officers of police and land-revenue to assist customs-officers.

25. All officers of police and officers of Government engaged in the collection of land-revenue, are empowered and required to assist the customs-officers in the execution of this Act.

Vexatious search, seizure, &c., by customs-officer.

26. Any customs-officer who,

(*a*) without reasonable ground of suspicion, searches or causes to be searched any house, boat or place;

(*b*) vexatiously and unnecessarily seizes the moveable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act;

(*c*) commits as such officer any other act to the injury of any person, when such officer has not reason to believe that such act is required for the execution of his duty,

shall for every such offence be punishable by a Magistrate exercising powers not less than those of a Magistrate of the second class, with fine not exceeding five hundred rupees.

Any person wilfully or maliciously giving false information and so causing a search to be made under this Act shall be punishable by a Magistrate exercising the same powers with fine not exceeding five hundred rupees, or with imprisonment for a term not exceeding two years, or with both.

Power to regulate seizures and disposal of things seized.

27. The Governor General in Council may make rules to regulate the seizure, disposal, and destruction of things liable to be seized under this Act.

Such rules may among other matters provide—

(*a*) that the owner or person having the charge of any animal seized and detained shall provide from day to day for its keep while detained, and that,

if he omits to do so, such animal may be sold by public auction, and the expenses (if any) incurred on account of it defrayed from the proceeds of the sale:

(*b*) that when anything is seized and an order for its release is subsequently passed and the owner does not within a period to be fixed by such rules appear to claim such thing and tender the duties, penalties and charges (if any) due in respect thereof, it may be sold by public auction, and such duties, penalties and charges defrayed from the proceeds of the sale:

(*c*) that the surplus-proceeds of a sale under clause (*a*) or clause (*b*) of this section shall, if not claimed by the owner of the thing seized within a period to be fixed by such rules, be forfeited to Her Majesty.

CHAPTER VI.—MISCELLANEOUS.

Power to prohibit import, export, and transit of salt or sugar.

28. The Governor General in Council may, from time to time by rule prohibit absolutely, or subject to conditions, the transit of salt or of sugar into, out of, or over, the said territories or any part thereof. [a]

Except in the case of a prohibition under this section, nothing in this Act shall affect the importation of salt or exportation of sugar into or from any of the said territories, from or into any other of the said territories, or the Lower Provinces of the Presidency of Fort William.

Further matters for which Governor General may make rules.

29. In addition to the rules which the Governor General in Council is hereinbefore empowered to make, he may from time to time make rules to regulate the following matters, namely:

(*a*) the persons by whom, and the time, place and manner at or in which, anything to be done under this Act shall be done;

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[a] In exercise of this power the Governor General in Council has prohibited the transit of salt—

(*a*) from the west over any portion of the western frontier of the Nimár District of the Central Provinces, except when such salt is conveyed by rail:

(*b*) from the left to the right bank of the Satlaj at any point west of that where the Inland Customs line crosses that river:

(*c*) from the left to the right bank of the Chenáb from its junction with the Satlaj to its junction with the Indus:

(*d*) from the right to the left bank of the Indus, except such salt as is the produce of the Kalabágh mines:

(Revenue, Agriculture and Commerce Department Notifications No. 347, dated 27th October 1875,—*Gazette of India*, 30th October 1875, p. 554, and No. 439, dated 31st December 1875—*Gazette of India*, 1st January 1876, p. 3.)

The Governor General in Council has also directed that no salt shall be imported into the Central Provinces across the Narbada at any point west of that where the Inland Customs line crosses that river, except such salt as is brought by the Indore State Railway to Khandwá on payment of the duty of Rs. 3 per maund of 3,200 tolas weight.—Revenue, Agriculture and Commerce Department Notification No. 207, dated 18th June 1875,—*Gazette of India*, 19th June 1875, p. 324.

Rules as to taking sugar into or out of Hoshangábád No. 114, dated 17th May 1876,—*Gazette of India*, 20th May 1876, p. 265.

(*b*) the cases in which, and the officers to whom, and the conditions subject to which, orders given by customs-officers under this Act shall be appealable ;

(*c*) the fee to be charged on account of any license, pass, certificate, dákhilá, rawána or other such document issued under this Act ;

and generally to carry out the provisions herein contained.

30. All rules made under this Act must be consistent herewith and shall be published in the *Gazette of India*, and shall thereupon have the force of law. Publication of rules.

31. Subject to the provisions herein contained and to any rules for the time being in force made by the Governor General in Council, the Local Government may invest any person with the powers of a Collector under this Act, or with all or any of the powers hereinbefore conferred on customs-officers. Power of Local Government to confer powers of Collector and customs-officers.

32. All duties now leviable on salt or sugar imported into or exported from, or moved through, or manufactured in, the said territories, shall, until otherwise directed by the Governor General in Council, be deemed to be leviable under this Act. Saving of existing duties on salt and sugar.

33. All rules now in force which might have been made under this Act if it had been in force, shall be deemed to have been issued hereunder, and the existing customs-line shall be deemed to have been defined and protected hereunder. Existing rules. Existing customs-line.

ACT No. IX of 1875.

Received the Governor General's assent on the 2nd March 1875.

An Act to amend the Law respecting the age of majority.

Whereas, in the case of persons domiciled in British India, it is expedient to prolong the period of nonage, and to attain more uniformity and certainty respecting the age of majority than now exists ; It is hereby enacted as follows :— Preamble.

1. This Act may be called "The Indian Majority Act, 1875 :" Short title.

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty ; Local extent.

and it shall come into force and have effect only on the expiration of three months from the passing thereof. Commencement and operation.

2. Nothing herein contained shall affect— Savings.

(*a*) the capacity of any person to act in the following matters (namely),— Marriage, Dower, Divorce, and Adoption ;

(*b*) the religion or religious rites and usages of any class of Her Majesty's subjects in India, or

(*c*) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him.

Age of majority of persons domiciled in British India.

3. Subject as aforesaid, every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards, shall, notwithstanding anything contained in the Indian Succession Act (No. X of 1865) or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before :

Subject as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.

Age of majority how computed.

4. In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section three, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section three, at the beginning of the eighteenth anniversary of that day.

Illustrations.

(*a*) Z is born in British India on the first day of January, 1850, and has a British Indian domicile. A guardian of his person is appointed by a Court of Justice. Z attains majority at the first moment of the first day of January, 1871.

(*b*) Z is born in British India on the twenty-ninth day of February 1852, and has a British Indian domicile. A guardian of his property is appointed by a Court of Justice. Z attains majority at the first moment of the twenty-eighth day of February, 1873.

(*c*.) Z is born on the first day of January, 1850. He acquires a domicile in British India. No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the first day of January, 1868.

THE HIGH COURTS' CRIMINAL PROCEDURE ACT, 1875.

CONTENTS.

PREAMBLE.

CHAPTER I.—PRELIMINARY.

SECTIONS.

1. Short title.
   Local extent.
   Commencement.

SECTIONS.

2. Repeal of enactments.
3. Interpretation-clause.

CHAPTER II.—OF SESSIONS.

4. Time of holding sittings.
5. Place of holding sittings.
Notice of sittings.

CHAPTER III.—OF PROCEDURE ON COMMITMENTS.

6. Cases tried by High Courts to be tried under this Act.
7. Consideration and amendment of charge.
8. How Court may deal with charge.
9. Prisoner may apply for amendment.
10. Court may amend charge.
11. When trial may proceed immediately after amendment.
12. When new trial may be directed or trial suspended.
13. Charge to be recorded.
Copy of charge.
Copies of depositions.
14. Entry on unsustainable charge.
Effect of entry.
15. Prosecutor and accused person may recall witnesses.
16. Previous sanction to be obtained if offence in amended charge require it.

Joinder of Charges.

17. Separate charges for distinct offences.
18. More offences than one of same kind may be charged within a year of each other.
19. Trial of more than one offence.
One offence falling within two definitions.
Acts severally constituting more than one offence, but collectively coming within one definition.
20. Where it is doubtful what offence has been committed.
21. When a person is charged with one offence, he can be convicted of another.
22. When offence proved included in offence charged.
23. What persons may be charged jointly.
24. Effect of errors.
25. When irregular commitments may be validated.
26. Custody pending direction as to place of trial.
Procedure thereafter.
27. Intermediate custody of European British subjects.

CHAPTER IV.—OF THE COMMENCEMENT OF THE TRIAL.

28. Commencement of trial.
29. Plea of guilty.

SECTIONS.

30. Refusal to plead or claim to be tried.
31. Right of accused to be defended.

CHAPTER V.—OF JURIES.

(*a*) *Of Juries generally.*

32. Trials to be by jury.
33. Number of jurors.
34. Successive trials by same jury.
35. Majority of jurors for trial of European British subjects.
36. Trial of European British subject and Native jointly accused.
37. Provisions for European British subject requiring majority of Europeans in jury.
Native may claim separate trial.

(*b*) *Of Juries in the Presidency Towns.*

38. Trials before special jury.
39. [*Repealed.*]
40. Number of special jurors.
41. Exemption of special jurors.
42. Lists of common and special jurors.
43. Discretion of officer preparing lists.
44. Publication of lists.
45. Number of jurors to be summoned.
Supplementary summons.
46. Failure of jurors to attend.
47. Peremptory challenges.
Challenges on cause.
48. Trial of challenges.
49. Powers of Presidency High Courts as to jurors.

(*c*) *Of Juries in the Mofussil.*

50. Summoning jurors.
51. Military jurors.
52. Juries for trial of European British subjects.
53. Names of jurors to be called.
Objections to jurors.
54. Grounds of objection.
55. Decision of objection.
56. Supply of place of juror against whom objection allowed.
57. Juror to understand language in which evidence is given or interpreted.

(*d*) *Of the Foreman.*

58. Foreman of jury.

CHAPTER VI.—OF THE TRIAL.

59. Examination of witnesses.
60. Examination of accused before Magistrate to be evidence.

SECTIONS.

61. Examination of accused.
Accused not punishable for refusal to answer.
62. Defence.
63. Prosecutor's right of reply.
64. View by jury.
65. Locking-up jury.
66. Postponement of trial.
Adjournment.
67. Jury to attend at adjourned sitting.
68. Power to prescribe mode in which evidence shall be taken down.
69. Evidence of jurors.
70. Interpreter.

CHAPTER VII.—OF EVIDENCE.

71. Evidence of medical witness.
Court may summon medical witness.
72. Report of Chemical Examiner.
Genuineness of signature may be presumed.
73. Admission of accused.
74. Record of evidence in absence of accused.
75. Evidence given at preliminary inquiry.

Commissions.

76. When a commission may issue.
Mode of issuing commission.
Where witness is in a Native State.
Where witness is in a Presidency Town.
Prosecutor and accused may examine witness.
Return of commission.

Tender of Pardon to obtain Evidence.

77. Court may direct tender of pardon.
78. Commitment of person to whom pardon has been tendered.

Of securing Attendance of Witnesses and Production of Documents.

79. Procedure for obtaining attendance of witnesses.
80. Power to summon material witness or examine person present.
81. When warrant of arrest may issue in first instance.
82. Procedure when warrant cannot be served.
83. Release of attached property of witness appearing and satisfying Court.
Sale of property of witness not appearing or not satisfying Court.
84. Arrest of person disobeying summons.
85. Right of accused as to examination of witness.
86. Procedure for obtaining production of document required as evidence.

SECTIONS.

87. When warrant for search for documents may issue.
88. Power to impound document produced.
89. Procedure in case of refusal to answer or produce documents.

CHAPTER VIII.—OF THE CHARGE TO THE JURY.

90. Charge to jury.
91. Duty of Judge.

CHAPTER IX.—OF THE VERDICT AND THE DISCHARGE OF THE JURY.

92. Retirement to consider.
93. Duty of jury.
94. Foreman to communicate verdict.
95. Verdict to be given on each charge.
Judge may question jury.
96. Procedure where jury differ.
97. Verdict when to be delivered.
98. Discharge of jury in default of unanimity or majority of six with Judge's concurrence.
99. Discharge of jury in case of sickness of juror or prisoner.
100. Re-trial of prisoner after discharge of jury.
101. Power to reserve questions.
Procedure when question reserved.
102. Withdrawal of remaining charges on conviction on one of several charges.

CHAPTER X.—OF THE SENTENCE.

103. Form and direction of warrant of commitment.
104. Provisions of Criminal Procedure Code, sections 303, 304, 305, applied in Mofussil.
105. Levy of fine.
Cases to which section applies.
106. Payment of fine in compensation.
107. Imprisonment in default of payment of fine.
108. Execution of sentences of whipping.
109. Sentence in cases of simultaneous conviction of several offences.
Maximum term of imprisonment.
110. Currency of sentence on escaped convicts.
111. Sentence on offender already sentenced for another offence.
Proviso.
112. Confinement of youthful offenders in reformatories.
113. Sentence of death.
114. Postponement of capital sentence on pregnant woman.
115. Order for disposal of property regarding which offence committed.
116. Expenses of complainants and witnesses.

CHAPTER XI.—Of Previous Convictions or Acquittals.

Sections.
117. Person once convicted or acquitted not to be tried for same offence.
118. Previous conviction to be set out in charge.
119. Previous conviction or acquittal how proved.

CHAPTER XII.—Of Criminal Lunatics.

120. Procedure in case of person committed being lunatic.
121. Release of lunatic pending investigation or trial.
Custody of lunatic.
122. Resumption of trial.
123. Procedure on accused appearing before Court.
124. Finding in case of acquittal on ground of being lunatic.
125. Person so acquitted to be kept in safe custody.
126. Lunatic prisoners to be visited by Inspector General.
127. Procedure where lunatic prisoner is reported capable of making his defence.
128. Procedure where lunatic confined under section 125 is declared capable of being discharged.
129. Delivery of lunatic to care of relative.
130. Procedure where accused does not understand the proceedings.

CHAPTER XIII.—Of Prosecutions in certain Cases.

131. Prosecutions for offences against the State.
132. Prosecution of Judges and public servants.
Sanction when to be given.
133. Prosecution for contempts of the lawful authority of public servants.
134. Nature of sanction necessary.
135. Procedure in cases mentioned in section 133.

CHAPTER XIV.—Of Bail.

136. Power to direct admission to bail.
137. Procedure to compel payment of penalty by accused.
138. Procedure to compel payment of penalty by sureties.
Remission of part of penalty.
Court may direct Magistrate to levy sum forfeited.
139. Deposit instead of bail.

CHAPTER XV.—Of Security for keeping the Peace.

140. Personal recognizance to keep the peace in cases of conviction.
141. Security to keep the peace.
142. Power to restore possession of immoveable property.

CHAPTER XVI.—Miscellaneous.

143. Saving of Acts XV of 1869 and V of 1871.
144. Advocate General may exhibit informations.
145. Effect of charge preferred by Advocate General.
146. Power to enter *nolle prosequi.*
147. Power of Presidency High Court to transfer to itself cases from Police Magistrates.
148. Power to issue directions of the nature of a *habeas corpus.*
149. Courts and persons before whom affidavits may be sworn.
150. Criminal Courts to be open.
151. Compounding offences.
152. Judges of High Courts to be Justices of the Peace *virtute officii.*

The Schedule.—Enactments repealed.

ACT No. X of 1875.

Received the Governor General's assent on the 9th March 1875.

An Act to regulate the Procedure of the High Courts in the exercise of their original criminal jurisdiction.

Preamble.

Whereas it is expedient to consolidate and amend the law relating to the procedure of the High Courts in the exercise of their original criminal jurisdiction; It is hereby enacted as follows:—

CHAPTER I.—Preliminary.

Short title.

1. This Act may be called "The High Courts' Criminal Procedure Act, 1875:"

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force on the first day of May 1875.

Repeal of enactments.

2. The enactments mentioned in the schedule hereto annexed are repealed to the extent mentioned in the third column of the said schedule, but not so as to revive any practice thereby abolished.

And all rules made under any of the said enactments shall be deemed to have been made under this Act, so far as they are consistent herewith.

3. In this Act, unless there be something repugnant in the subject or context— Interpretation-clause.

"High Court" includes all High Courts established or to be established under the twenty-fourth and twenty-fifth of Victoria, Chapter 104, the Chief Court of the Panjáb, and such other Courts as the Governor General in Council may, from time to time, declare to be invested with the powers of a High Court under this Act: "High Court."

"Chief Justice" includes also the Senior Judge of a Chief Court: "Chief Justice."

"Advocate General" includes also a Government Advocate: "Advocate General."

"Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Act to the Clerk of the Crown; and "Clerk of the Crown."

"Magistrate" includes also a Police Magistrate in the Towns of Calcutta, Madras and Bombay: "Magistrate."

"European British Subject" means— "European British Subject."

(*a*.) all subjects of Her Majesty born, naturalized or domiciled in the United Kingdom of Great Britain and Ireland or in any of the European, American, or Australian colonies or possessions of Her Majesty, or in the colonies of New Zealand, the Cape of Good Hope and Natal;

(*b*.) the children and grandchildren of any such person by legitimate descent:

"Prosecutor" includes every person conducting a prosecution on behalf of Her Majesty: "Prosecutor."

"Offence" denotes anything made punishable by any law for the time being in force; and "Offence."

words which refer to acts done extends also to illegal omissions.

CHAPTER II.—Of Sessions.

4. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints. Time of holding sittings.

5. The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor General in Council in the case of the High Court at Fort William, and as the Local Govern- Place of holding sittings.

ment in the case of the other High Courts may direct. But it may, from time to time,

in the case of the High Court at Fort William, with the consent of the Governor General in Council,

in all other cases, with the consent of the Local Government,

hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Notice of sittings.

Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

CHAPTER III.—Of Procedure on Commitments.

Cases tried by High Courts to be tried under this Act.

6. The provisions of this Act shall apply to all criminal cases triable by the High Court.

Consideration and amendment of charge.

7. When any person is committed for trial before a High Court, the Clerk of the Crown, or, if there be not a Clerk of the Crown, a Judge of the High Court, shall, on receipt of the charge, peruse and consider it, and may, if it appear necessary or expedient so to do, alter or redraw the same, having regard to the rules as to the form of charges contained in the Code of Criminal Procedure.

How Court may deal with charge.

8. If a prisoner is committed to the Court without any charge at all, the Clerk of the Crown, or, if there be not a Clerk of the Crown, a Judge of the High Court, may draw up a charge, having regard to the rules referred to in section seven. If a prisoner is committed upon a charge which the Court, upon reference to the proceedings before the committing Magistrate, considers improper, the Court may draw up a charge for any offence or offences which it considers to be proved by the evidence taken before the committing Magistrate.

Prisoner may apply for amendment.

9. Any accused person may apply to the Court for an amendment of the charge made against him; and in considering whether any error in a charge did in fact mislead the accused person, the Court shall take into account the fact that he did or did not make such an application.

Court may amend charge.

10. The Court may, upon the application of the accused person, or of the prosecutor, or upon its own motion, amend or alter any charge at any stage of the proceedings before the verdict of the jury is delivered. Such amendment shall be explained to the accused person.

11. If the amendment or alteration is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused person in his defence, it shall be at the discretion of the Court, after making such amendment or alteration, to proceed with the trial as if the amended charge had been the original charge.

When trial may proceed immediately after amendment.

12. If the amendment or alteration is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused person in his defence, the Court may either direct a new trial, or suspend the trial for such period as may be necessary to enable the accused person to make his defence to the amended or altered charge; and, after hearing his defence, the Court may, if it thinks fit, further adjourn the trial, to admit of the appearance of any witness whose evidence the Court may consider to be material to the case, or whom the accused person may wish to be summoned in his defence.

When new trial may be directed or trial suspended.

13. The charge, with such alterations (if any) as may have been made therein, shall be recorded in the High Court, and a copy of such charge shall be given to the person[a] gratis, if he demands it.

Charge to be recorded. Copy of charge.

The person charged shall also be entitled to a copy of his own examination before the committing Magistrate, and to copies of the examinations of witnesses upon whose depositions he has been committed, and of all documents read and made exhibits as part of such depositions by the committing Magistrate, if the person charged demands them a reasonable time before the case comes on for trial and pays for the same a reasonable sum not exceeding one anna for each folio of ninety words.

Copies of depositions.

The Court may for any special reason remit any such payment.

14. When any charge, or portion of a charge, recorded as aforesaid, appears to a Judge of the High Court, at any time before the commencement of the trial of the person charged, to be clearly unsustainable, such Judge may make on the charge an entry to that effect.

Entry on unsustainable charge.

Such entry shall have the effect of staying proceedings upon the charge or portion of the charge (as the case may be), but shall not operate as an acquittal of the person charged.

Effect of entry.

15. In all cases of amendment or alteration of a charge during the trial, the prosecutor and accused person shall be allowed to recall and examine any witness who may have been examined.

Prosecutor and accused person may recall witnesses.

16. If the offence stated in the amended or altered charge be one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained; unless sanction has been al-

Previous sanction to be obtained if offence in

[a] The person charged.

amended charge require it.

ready obtained for a prosecution on the same facts as those on which the amended or altered charge was founded.

Joinder of Charges.

Separate charges for distinct offences.

17. There must be a separate charge for every distinct offence of which any person is accused, and every such charge must be tried separately, except in the cases hereinafter excepted.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and the causing grievous hurt.

More offences than one of same kind may be charged within a year of each other.

18. When a person is accused of more offences than one of the same kind, committed within one year of each other, he may be charged and tried at the same time for any number of them not exceeding three.

EXPLANATION.—Offences are said to be of the same kind under this section if they fall within the provisions of section twenty.

Trial of more than one offence.

19. I.—If in one series of acts, so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried for every such offence at the same time.

One offence falling within two definitions.

II. If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being, by which offences are defined or punished, the person accused of them may be charged with each of the offences so committed; but he must not receive a more severe punishment than could be awarded for any of such offences.

Acts severally constituting more than one offence, but collectively coming within one definition.

III. If several acts, of which one or more than one would by itself constitute an offence, form, when combined, a different offence, the person accused of them may be charged with every offence, or any of the different offences, which he may have committed; but he must not receive for such offences, collectively, a punishment more severe than that which might have been awarded for any one of such offences.

Illustrations.

To paragraph I.

(*a.*) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be separately charged with, convicted of, and punished for, offences under sections 225 and 333, Indian Penal Code.

(*b.*) A has in his possession several counterfeit seals with the intention of committing several forgeries. A may be separately charged with, convicted of, and punished for, the possession of each seal for a distinct forgery under section 473, Indian Penal Code.

(*c.*) A, with intent to cause injury to B, institutes proceedings against him, knowing there is no just or lawful ground for such proceedings. A also, in the course of the proceedings, falsely charges B with having committed an offence. A may be separately charged with, convicted of, and punished for, two offences under section 211, Indian Penal Code.

(*d.*) A, with intent to injure B, brings a false charge against him of having committed an offence. On the trial, A gives false evidence against B. A may be separately charged with, convicted of, and punished for, offences under sections 211 and 194 or 195, Indian Penal Code.

(*e.*) A, knowing that B, a female minor, has been kidnapped, wrongfully confines her and detains her as a slave. A may be separately charged with, convicted of, and punished for, offences under sections 368 (read with 367) and 370, Indian Penal Code.

(*f.*) A, with six others, commits the offences of rioting, grievous hurt to B, and of assaulting C, a public servant engaged in suppressing the riot. A may be separately charged with, convicted of, and punished for, offences under sections 147, 325 and 152, Indian Penal Code.

(*g.*) A criminally intimidates B, C and D at the same time. A may be separately charged with, convicted of, and punished for, each of the three offences under section 506, Indian Penal Code.

(*h.*) A intentionally causes the death of three persons by upsetting a boat. A may be separately charged with, convicted of, and punished for, three offences under section 302, Indian Penal Code.

To paragraph II.

(*i.*) A commits mischief by cutting down a tree in a Government forest. The tree overhangs the bank of a river and falls into the stream. A commits theft by having severed the tree and by floating it down the river to his village, where he sells it. A may be separately charged with, and convicted of, offences under sections 426 and 379, Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under section 379 only.

(*j.*) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code; but the Court which tries him may not inflict a more severe sentence that if it had convicted him under section 323 only.

(*k.*) A wrongfully kills a buffalo worth sixty rupees belonging to B, and then takes away the carcase in a manner amounting to theft. A may be separately charged with, and convicted of, offences under sections 429 and 379, Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under section 429 only.

(*l.*) Several stolen sacks of corn are made over to A and B, who know they are stolen property. A and B thereupon assist each other to conceal the sacks at

the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414, Indian Penal Code; but the Court which tries them may not inflict a severer sentence than if it had convicted them under one of those sections only.

(*m.*) A uses a forged document in evidence, in order to convict B, a public servant, of an offence under section 167. A may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under one of those sections only.

To paragraph III.

(*n.*) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497, Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under section 497 only.

(*o.*) A robs B, and, in doing so, voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under section 392 or 394 only.

(*p.*) A entices B, the wife of C, away, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497, Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under section 497 only.

Where it is doubtful what offence has been committed.

20. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused person may be charged with having committed all or any of such offences; and any number of such charges may be tried at once, or he may be charged in the alternative with having committed some one of the said offences.

Illustration.

A is accused of an act which may amount to either theft, receiving stolen property, criminal breach of trust or cheating. He may be charged separately with theft, criminal breach of trust, and cheating, or he may be charged with having committed either theft, or criminal breach of trust, or cheating.

When a person is charged with one offence, he can be convicted of another.

21. If, in the case mentioned in section twenty, one charge only is brought against an accused person, and it appears in evidence that he committed a different offence, for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustration.

A is charged with theft. It appears that he committed criminal breach of trust, or receiving stolen goods. He may be convicted of criminal breach of trust, or receiving stolen goods, though he was not charged with it.

When offence proved included in offence charged.

22. When a person is charged with an offence, and part of the charge is not proved, but the part which is proved amounts to a different offence, he may be convicted of the offence which he is proved to have committed, though he was not charged with it.

Illustrations.

(*a.*) A is charged, under section 407, Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(*b.*) A is charged with murder. He may be convicted of culpable homicide, or of causing death by negligence.

What persons may be charged jointly.

23. When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks proper, and the provisions hereinbefore contained shall apply to all such charges.

Illustrations.

(*a.*) A and B are accused of the same murder. A and B may be charged and tried together for the murder.

(*b.*) A and B are accused of a robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.

(*c.*) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with the one theft, and B alone with the two other thefts.

Effect of errors.

24. No error, either in the way in which the offence is stated, or in the particulars required by the Code of Criminal Procedure to be stated, and no omission to state the offence, or to state those particulars, shall be regarded at any stage of the case as material, unless the person accused was in fact misled by such error or omission.

Illustrations.

(*a.*) A is charged, under section 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit;" the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(*b.*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c.*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(*d.*) A is charged with the murder of Khodá Baksh on the 21st January. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(*e.*) A was charged with murdering Haidar Baksh on the 20th January, and Khodá Baksh (who tried to arrest him for that murder) on the 21st January. When charged for the murder of Haidar Baksh, he was tried for the murder of Khodá Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

When irregular commitments may be validated.

25. If any Magistrate or other authority purporting to exercise powers conferred, but not being actually so empowered, commits an accused person to take his trial before a High Court, the Court may, after perusal of the proceedings, accept the commitment if it considers that the accused person has not been prejudiced, unless objection was made on behalf either of the accused person or of the prosecution to the jurisdiction of the committing Magistrate during the inquiry and before the order of commitment.

If such Court considers that the accused person was prejudiced, or if such objection as aforesaid was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

Custody pending direction as to place of trial.

26. Pending the directions of the Court as to the place of trial, every person committed for trial shall (if not admitted to bail) be committed by the

Magistrate for intermediate custody to the criminal jail in which he can be most conveniently confined.

If the trial be directed to be held at the ordinary place of sitting of the Court, the Magistrate shall bind over the person charged to appear and take his trial at such place of sitting, or shall commit him to the jail at such place. Procedure thereafter.

If the Court direct that the person charged be tried elsewhere than at its ordinary place of sitting, the Magistrate shall bind him over to appear and take his trial at the place so directed, or shall, if necessary, cause him to be removed to the criminal jail at or nearest to the place at which he is directed to be tried.

27. The Court may direct that all European British subjects committed or bailed for trial by it within certain specified districts or during certain specified periods of the year, shall be tried at the ordinary place of sitting of the Court, Intermediate custody of European British subjects.

or direct that they shall be tried at a particular place named, and may also order that they shall, if not bailed, be committed for intermediate custody to a particular jail, being one of the jails appointed by the Government for the reception of such prisoners.

CHAPTER IV.—Of the Commencement of the Trial.

28. When the Court is ready to commence the trial, the accused person shall be brought before it, and the charge shall be read and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried. Commencement of trial.

29. If the accused person pleads guilty, the plea shall be recorded, and he may be convicted thereon. Plea of guilty.

30. If the accused person refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors as hereinafter directed, and to try the case. Refusal to plead or claim to be tried.

31. Every person accused of an offence may of right be defended by any advocate of a High Court. Right of accused to be defended.

Any such person may, with the permission of the Court (but not otherwise), employ any person not being an advocate, attorney or pleader, to assist him in his defence.

CHAPTER V.—Of Juries.

(a) Of Juries generally.

Trials to be by jury.

32. All trials under this Act shall be by jury;

and, notwithstanding anything contained in section sixty-four of the Code of Criminal Procedure, in all criminal cases transferred to a High Court under that section or under the Letters Patent of any High Court established under the twenty-fourth and twenty-fifth of Victoria, Chapter 104, the trial may, if the High Court so direct, be by jury.

Number of jurors.

33. The jury shall consist of nine persons, who shall be chosen by lot from the persons summoned to act as jurors: provided that, in case of a deficiency of such persons, the number required may, with the leave of the Court, be chosen from such other persons as may be present.

Successive trials by same jury.

34. Subject to the right of challenge hereinafter mentioned, the same jury may try as many accused persons successively as the Court thinks fit.

Majority of jurors for trial of European British subjects.

35. If before the first juror is called and accepted, any European British subject charged as aforesaid requires to be tried by a mixed jury, the majority of the jurors shall consist of Europeans or Americans, or both Europeans and Americans.

Trial of European British subject and Native jointly accused.

36. In any case in which a European British subject is accused jointly with a person not being a European British subject, and such European British subject is committed for trial before a High Court, the person so jointly accused shall (if the committing Magistrate thinks that he ought to be tried) also be committed for trial before such High Court, notwithstanding any provision to the contrary in the Code of Criminal Procedure.

Such persons may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately.

Provisions for European British subject requiring majority of Europeans in jury. Native may claim separate trial.

37. Provided that, if before the first juror is called and accepted the European British subject requires the majority of the jurors to consist of Europeans or Americans, or both Europeans and Americans, and the person not being a European British subject requires that he shall be tried separately by a jury of which at least five members shall be persons not being Europeans or Americans, the latter person shall be tried separately.

(b) Of Juries in the Presidency Towns.

Trials before special jury.

38. Every person tried in Calcutta, Madras or Bombay shall be tried before a special jury

(*a*) if charged with having committed an offence punishable with death, or

(*b*) if in any other case a Judge of the High Court so directs.

39. [*Repealed by Act No. XII of* 1876.]

40. The names of not more than two hundred persons shall at any one time be entered in the special jurors' list. Number of special jurors.

41. All persons whose names are entered in the special jurors' list shall be exempted from serving on any other than special juries, but so long only as their names are contained in such list. Exemption of special jurors.

42. The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare Lists of common and special jurors.

(*a*) a list of all persons liable to serve as common jurors;

(*b*) a list of persons liable to serve as special jurors only.

Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

No person shall be entitled to have his name entered in the special jurors' list, merely because he may have been entered in the special jurors' list for a previous year.

The Governor General in Council may exempt any salaried officer of Government from serving as a juror.[a]

43. The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision. Discretion of officer preparing lists.

44. Preparatory lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the officer by whom the same have been prepared, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation. Publication of lists.

Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

45. Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries. Number of jurors to be summoned.

No person shall be so summoned more than once in six months unless the number cannot be made up without him.

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a For rules as to summoning, &c., jurors in the High Court at Fort William, see *Gazette of India*, 4th March 1876, Part II, p. 131.

Supplementary summons.

If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

Failure of jurors to attend.

46. Any person summoned under section forty-five who without lawful excuse fails to attend as required by the summons, or who having attended departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable by order of the Judge to such fine as he thinks fit, and, in default of payment of such fine, to imprisonment in the civil jail until the fine is paid.

Peremptory challenges.

47. Challenges without cause shown shall be allowed to the number of eight on behalf of the Crown, and eight on behalf of the person or all the persons charged.

Challenges on cause.

The following and no others shall be good causes of challenge, whether on behalf of the Crown, or by the person or persons charged:—

(*a*) some personal objection, such as alienage, infancy, old age, or deficiency in the qualification required by any law or rule having the force of law for the time being in force:

(*b*) some presumed or actual partiality in the juror:

(*c*) a previous conviction of the juror of a non-bailable offence under the Indian Penal Code, or of a similar offence under any other law in force in British India:

(*d*) inability to understand English when spoken.

Trial of challenges.

48. The Judge before whom a person charged is about to be tried shall try any challenge, other than a challenge without cause shown; and if the Judge allow the challenge, the juror shall be set aside.

The decision of the Judge as to any challenge shall be final.

Powers of Presidency High Courts as to jurors.

49. Save as herein provided, the High Courts of Judicature at Fort William, Madras and Bombay shall retain all their present powers respecting the summoning, empannelling, qualification, challenging, and service of jurors, and shall have power to make such rules on these subjects (consistent with the provisions of this Act) as seem to them to be proper.

All rules relating to jurors now in force in the same High Courts shall (so far as they are consistent with this Act) remain in force until repealed or altered by new rules made under this section.

(*c*) *Of Juries in the Mofussil.*

Summoning jurors.

50. Whenever a High Court has given notice of its intention to hold sittings at any place (other than the towns of Calcutta, Madras and Bombay)

for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, take and cause to be taken the measures prescribed by sections 407, 409, 410 and 411 of the Code of Criminal Procedure for the summoning of jurors.

Military jurors.

51. In addition to the persons so summoned as jurors, the said Court of Session shall, if it think needful, after communication with the Commanding Officer, cause to be summoned such number of Commissioned and Non-Commissioned officers in the military service, resident within ten miles of its place of sitting, as the Court considers to be necessary to make up the juries required for the trial of European British subjects charged with offences before the High Court as aforesaid.

All Commissioned and Non-Commissioned officers so summoned shall be liable to serve on such juries notwithstanding anything contained in the Code of Criminal Procedure; but no Commissioned or Non-Commissioned officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

Juries for trial of European British subjects.

52. The juries for the trial of European British subjects as aforesaid shall be formed in the manner required by the Code of Criminal Procedure and by this Act from the persons summoned in accordance with sections fifty and fifty-one.

Names of jurors to be called.

53. As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused person shall be asked if he objects to be tried by such juror.

Objections to jurors.

Objection may then be made to such juror by the accused person, or by the prosecutor, and the grounds of objection shall be stated.

Grounds of objection.

54. Any objection made to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:—

(*a*) his holding any office in or under the Court or the local Court of Session;

(*b*) his executing any duties of Police or being entrusted with any Police functions;

(*c*) his having been convicted of any offence against the State, or of any fraudulent or other offence which, in the judgment of the Court, renders him unfit to serve on the jury;

(*d*) his having by habit or religious vows, relinquished all care of worldly affairs;

(*e*) his standing in the relation of husband, master, servant, landlord or tenant, to the person alleged to be injured, or attempted to be injured, by the offence charged, or to the person accused;

(*f*) his being in the employment of any of such persons;

(*g*) his being plaintiff or defendant in any civil suit against any of such persons;

(*h*) his having complained against, or having been accused by, any of such persons in any criminal prosecution;

(*i*) any circumstance which, in the judgment of the Court, is likely to cause prejudice against, or favour to, any of such persons, or which renders such person improper as a juror.

Decision of objection.

55. Any objection made to a juror shall be decided by the Court, and such decision shall be final.

Supply of place of juror against whom objection allowed.

56. If the objection be allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons; or, if there be no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury; provided no objection to such other juror or person be made and allowed under section fifty-four.

Juror to understand language in which evidence is given or interpreted.

57. The Judge shall not allow any person to serve on the jury, unless such person understands the language in which the evidence is given or interpreted.

(d) Of the Foreman.

Foreman of jury.

58. When the jury has been completed, they shall appoint one of their number to be foreman.

It shall be the duty of the foreman to preside in the debates of the jury, to deliver the verdict of the jury, and to ask any information from the Court that may be required by the jury or any of the jurors.

If a majority of the jury do not agree in the appointment of a foreman, he shall be appointed by the Court.[a]

CHAPTER VI.—Of the Trial.

Examination of witnesses.

59. The prosecutor shall then open his case, and the witnesses shall be examined, cross-examined and re-examined according to the law for the time being relating to the examination of witnesses.

Examination of accused before Magistrate to be evidence.

60. The examination of the accused person before the committing Magistrate shall be given in evidence at the trial.

[a] As to swearing the jurors, see Act No. X of 1873, s. 5.

61. The Court may from time to time, at any stage of the trial, examine the accused person. Examination of accused.

The accused person shall not be liable to any punishment for refusing to answer, or for answering falsely, questions asked under this section, but the Court shall draw such inference as seems just from such refusal or false answer. Accused not punishable for refusal to answer.

No oath or affirmation shall be administered to the accused person.

62. When the examination of the witnesses for the prosecution and the examination of the accused person are concluded, the accused person shall be asked whether he means to call witnesses. If he says that he does not, the prosecutor may sum up his case. The Court may then, if it thinks that there are no grounds for proceeding, direct the jury to return a verdict of acquittal. Defence.

If the Court considers that there are grounds for proceeding, it shall call on the accused person to state his grounds of defence and produce his witnesses.

The accused person or his Counsel may then state the case for the defence, and may examine the witnesses, if any, produced for the defence, and at the conclusion of such examination may sum up his case.

63. If any evidence is adduced on behalf of the accused person, the prosecutor shall be entitled to reply. Prosecutor's right of reply.

64. Whenever, in the opinion of the Court, it is proper and convenient that the jury should view the place in which the offence charged is said to have been committed, or any other place in which any other transaction material to the inquiry in the trial took place, an order shall be made to that effect, and the jury shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court. Such officer shall not suffer any other person to speak to, or hold any communication with, any of the jury. View by jury

65. The High Court may from time to time make rules as to keeping the jury together during a trial lasting for more than one day, and, subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.[a] Locking-up jury.

66. The Court may, in its discretion, postpone the hearing of the case; and may, from time to time, adjourn the trial, if it considers that such adjournment is proper and will promote the ends of justice. Postponement of trial. Adjournment.

67. If a trial is adjourned, the jury shall be required to attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial. Jury to attend at adjourned sitting.

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[a] See *Bombay Government Gazette*, 24th June 1875, p. 653.

Power to prescribe mode in which evidence shall be taken down.

68. The Court may, if it think fit, from time to time by general rule prescribe the manner in which evidence shall be taken down in cases coming before the Court in the exercise of its ordinary or its extraordinary original criminal jurisdiction, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

Evidence of jurors.

69. If a juryman is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be examined, cross-examined and re-examined, in the same manner as any other witness.

Interpreter.

70. When the services of an interpreter are required by the Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Chapter VII.—Of Evidence.

Evidence of medical witness.

71. The examination of a Civil Surgeon or other medical witness, taken and duly attested by a Magistrate, may be given in evidence in any criminal trial, although the person examined is not called as a witness.

Court may summon medical witness.

The Court may summon such Civil Surgeon or other medical witness, if it sees sufficient cause for doing so.

Report of Chemical Examiner.

72. Any document purporting to be a report from the Chemical Examiner, or Assistant Chemical Examiner, to Government, upon any matter or thing duly submitted to him for examination or analysis and report, in the course of any criminal trial, or in any preliminary inquiry relating thereto, may, if it bears his signature, be used as evidence in any criminal trial.

Genuineness of signature may be presumed.

The Court may presume that the signature of any such document is genuine, and that the person signing it held the office which he professed to hold at the time when he signed it.

Admission of accused.

73. If, after the commencement of the trial, the accused person admits before the Court the commission of an offence, the Court may convict him on his own admission, whether such offence is the same as the offence of which he is accused, or not.

Record of evidence in absence of accused.

74. If an accused person abscond, and after due pursuit cannot be arrested, the Court may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution and record their depositions; and any such deposition may, on the arrest of such person, be put in on his trial for the offence with which he is charged if it is not practicable to procure the attendance of the deponent.

75. When a witness is produced, the evidence (if any) given by him before the committing Magistrate may, in the discretion of the presiding Judge, be treated as evidence in the case, if it was duly taken in the presence of the accused person.

Evidence given at preliminary inquiry.

EXPLANATION.—This section shall not authorize the Court to refer to the record of the evidence given by a witness who is absent, except in the cases in which such evidence may be referred to under the Indian Evidence Act, 1872, or other law in force for the time being upon the subject of evidence.

Commissions.

76. Whenever, at any time after the commitment, it appears that the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the Court may dispense with his personal attendance.

When a commission may issue.

The Court may direct a commission to the Magistrate of the District, or to a Magistrate of the first class, in whose jurisdiction such witness may be. The Magistrate to whom the commission is directed shall proceed to the place where such witness is, or shall summon such witness before himself. Such Magistrate shall take the evidence of such witness in the same manner, and shall have for this purpose, and may exercise, the same powers as in trials of warrant cases under the Code of Criminal Procedure.

Mode of issuing commission.

When the witness is in the territories of any Native Prince or State in India in alliance with Her Majesty, the commission may be directed to any Justice of the Peace or other officer in the service of the Crown resident in such territories; and the provisions of the second clause of this section shall apply to such Justice of the Peace or officer.

Where witness is in a Native State.

If the witness is within the local limits of the ordinary original criminal jurisdiction of any of the High Courts of Judicature at Fort William, Madras and Bombay, the commission may be directed to any Police Magistrate within such limits, and such Magistrate shall have the like power to compel the attendance and examination of witnesses as he possesses for that purpose in cases pending before him.

Where witness is in a Presidency Town.

The prosecutor and the accused person may forward interrogatories, upon which the officer to whom the commission is directed shall examine the witness, or the prosecutor may appear personally before the officer to whom the commission is directed, or the prosecutor or accused person may so appear by authorized agent.

Prosecutor and accused may examine witness.

After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined

Return of commission.

thereunder, to the Court out of which it issued; and the commission, the return thereto, and the deposition of such witness may be used as evidence in the case and shall form part of the record.

Tender of Pardon to obtain Evidence.

Court may direct tender of pardon.

77. The Court may, with the view of obtaining on the trial the evidence of any person or persons supposed to have been directly or indirectly concerned in, or privy to, any offence mentioned in column 7 of the fourth schedule annexed to the Code of Criminal Procedure as triable exclusively by the Court of Session, instruct the committing Magistrate to tender, or itself may, at any time before judgment, tender, a pardon to such person or persons, on condition of his or their making a full, true and fair disclosure of the whole of the circumstances, within his or their knowledge, relative to the crime committed and every other person concerned in the perpetration thereof.

Any person accepting a tender of pardon under this section shall be examined as a witness in the case, under the rules applicable to the examination of witnesses.

Such person, if not on bail, shall be detained in custody pending the termination of the trial.

Commitment of person to whom pardon has been tendered.

78. When a pardon has been tendered under section seventy-seven, if it appears to the Court that any person who has accepted such tender has not conformed to the conditions under which it was made, either by wilfully concealing anything essential, or by giving false evidence, the Court may commit, or direct the commitment of, such person, for trial for the offence in respect of which the pardon was so tendered, or for any other offence of which he may appear to have been guilty in connection with the same matter.

The statement made by a person under pardon, which pardon has been withdrawn under this section, may be put in evidence against him.

Of securing Attendance of Witnesses and Production of Documents.

Procedure for obtaining attendance of witnesses.

79. The following procedure shall be pursued in order to obtain the attendance of witnesses before the Court.

Power to summon material witness or examine person present.

80. The Court may, at any stage of any proceeding, inquiry or trial, summon any witness, or examine any person in attendance though not summoned as a witness, and it shall be its duty to do so if the evidence of such person appears essential to the just decision of the case.

When warrant of arrest

81. If the Court has reason to believe that any witness whose attendance is required will not attend to give evidence without being compelled to do so,

it may, instead of issuing a summons, issue a warrant of arrest in the first instance.

may issue in first instance.

82. If such warrant cannot be executed, and the Court considers that the witness is absconding or concealing himself for the purpose of avoiding the service thereof, it may issue a proclamation, requiring his attendance to give evidence at a time and place to be named therein, to be affixed on some conspicuous part of his ordinary place of abode.

Procedure when warrant cannot be served.

If the witness does not attend at the time and place named in such proclamation, the Court may order the attachment of any moveable property belonging to such witness, to such amount as seems reasonable, not being in excess of the amount of costs of attachment and of any fine to which he may be liable under the provisions of the next following section.

Such order shall authorize the attachment of any such moveable property within the jurisdiction of the Court by which the order was made; and if any such moveable property be without the jurisdiction of the said Court, such order when endorsed by the Magistrate of the District in which such property is situated shall authorize the attachment of the property last aforesaid.

83. If the witness appears and satisfies the Court that he did not abscond or conceal himself for the purpose of avoiding the execution of the warrant, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property attached be released from attachment, and shall make such order in regard to the costs of the attachment as the Court thinks fit.

Release of attached property of witness appearing and satisfying Court.

If such witness does not appear, or, appearing, fails to satisfy the Court that he did not abscond or conceal himself for the purpose of avoiding the execution of the warrant, and that he had not such notice of the proclamation as aforesaid, the Court may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of any fine which may be imposed upon such witness under the provisions of section 172 of the Indian Penal Code.

Sale of property of witness not appearing or not satisfying Court.

If the witness pays to such Court the costs and fine as aforesaid, his property shall be released from attachment.

84. If any person summoned to give evidence neglects or refuses to appear at the time and place appointed by the summons, and no reasonable excuse is offered for such neglect or refusal, the Court, upon proof of the summons having been duly served, may issue a warrant under its seal to bring such person before it to testify as aforesaid.

Arrest of person disobeying summons.

85. The accused person shall be allowed to examine as a witness any person in attendance.

Right of accused as to examination of witness.

Procedure for obtaining production of document required as evidence.

86. Whenever the Court considers that the production of any document is necessary or desirable for the purposes of any investigation or judicial proceeding, the Court may issue a summons to the person in whose possession or power such document is believed to be, requiring him to attend and produce such document at the time and place stated in the summons.

When warrant for search for documents may issue.

87. If there is reason to believe that the person to whom the summons is addressed will not produce the document as directed in the summons, the Court may issue a search-warrant for the document in the first instance.

Power to impound document produced.

88. The Court may, if it thinks fit, impound any document produced before it, or may, at the conclusion of the proceedings, order such document to be returned to the person who produced it.

Procedure in case of refusal to answer or produce documents.

89. If a witness refuses to answer any question which is put to him or to produce any document in his possession or power which the Court requires him to produce, and does not offer any just excuse for such refusal, he shall be deemed guilty of contempt of Court.

CHAPTER VIII.—Of the Charge to the Jury.

Charge to jury.

90. When the case for the defence and the prosecutor's reply, if any, are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

Duty of Judge.

91. It is the duty of the Judge to decide all questions of law, and especially all questions as to the relevancy of facts which it is proposed to prove, the admissibility of evidence, or the propriety of questions asked by parties or their agents, which may arise in the course of the trial; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

to decide upon the meaning and construction of all documents given in evidence at the trial;

to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

to decide whether any question which arises is for himself or for the jury; and upon this point his decision shall be final.

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Illustrations.

(*a.*) It is proposed to prove a statement made by a person not called as a witness, under circumstances which render evidence of his statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(*b.*) It is proposed to give secondary evidence of a document, the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

CHAPTER IX.—Of the Verdict and the Discharge of the Jury.

92. After the Judge has finished his charge, the jury may retire to consider their verdict. Retirement to consider.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

93. It is the duty of the jury— Duty of jury.

(*a*) to decide which view of the facts is true, and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned ;

(*b*) to determine the meaning of all technical terms and words used in an unusual sense, which it may be necessary to determine, whether such words occur in documents or not ;

(*c*) to decide all questions which according to law are to be deemed questions of fact ;

(*d*) to decide whether general, indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(1.) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(2) The question is, whether a person entertained a reasonable belief on a particular point. Whether work was done with reasonable skill, or due diligence.

Each of these is a question for the jury.

Foreman to communicate verdict.

94. When the jury have considered their verdict, the foreman shall inform the Court what is their verdict, or what is the verdict of a majority.

Verdict to be given on each charge. Judge may question jury.

95. The jury shall return a verdict on all the charges on which the accused is tried, and the Court may ask them such questions as are necessary to ascertain what their verdict is.

Procedure where jury differ.

96. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

Verdict when to be delivered.

97. A verdict of guilty or not guilty, as the case may be, shall be delivered either when the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them.

Discharge of jury in default of unanimity or majority of six with Judge's concurrence.

98. When the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

If the Judge disagrees with the majority, he shall then discharge the jury.

If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

Discharge of jury in case of sickness of juror or prisoner.

99. The Judge may also discharge the jury whenever by reason of illness a juryman becomes incapable of attending through the trial or the prisoner becomes incapable of remaining at the bar.

Re-trial of prisoner after discharge of jury.

100. Whenever the jury is discharged, the prisoner shall be detained in custody or on bail (as the case may be) and shall be tried by another jury unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

Power to reserve questions.

101. When any person has, in a trial before a Judge of the High Court acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve for the decision of a Court consisting of two or more Judges of the High Court any question of law which has arisen in the course of the trial of such person and the determination of which would affect the event of the trial.

Procedure when question reserved.

If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the Judge think fit, be admitted to bail,

and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to

alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the High Court seem fit.

102. When more charges than one are preferred against the same person, and when a conviction has been had on one or more of them, the prosecutor may, with the consent of the Court, withdraw, or the Court of its own accord may direct the withdrawal of, the remaining charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges.

Withdrawal of remaining charges, on conviction on one of several charges.

Chapter X.—Of the Sentence.

103. Every warrant for the commitment of a person to custody shall be in writing and signed and sealed by the Judge who issues it.

Form and direction of warrant of commitment.

104. In the case of a High Court holding its sittings elsewhere than in the towns of Calcutta, Madras or Bombay, the provisions of the Code of Criminal Procedure, sections 303, 304 and 305, shall apply to the officers therein mentioned.

Provisions of Criminal Procedure Code, sections 303, 304, 305, applied in Mofussil.

105. Whenever an offender is sentenced to pay a fine, the Court may issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, whether or not the offence be punishable with fine only, and whether or not the sentence direct that, in default of payment of the fine, the offender shall suffer imprisonment.

Levy of fine.

Such warrant may be executed within the jurisdiction of the Court, and it shall authorize the distress and sale of any moveable property belonging to the offender without the jurisdiction of the said Court, when endorsed by the Magistrate of the District in which such property is situate.

This section shall not apply to cases in which any special procedure is laid down by any special or local law in force for the time being for the recovery of any fine, but shall apply to cases in which no such procedure is laid down, and to all fines not levied when this Act comes into force, but which might have been levied under this section if it had been in force when they were imposed.

Cases to which section applies.

106. Whenever the Court imposes a fine under any law in force for the time being, the Court may order the whole or any part of the fine to be paid in compensation,

Payment of fine in compensation.

(*a*) for expenses properly incurred in the prosecution;

(*b*) for the offence complained of, where such offence can, in the opinion of the Court, be compensated by money.

Such payment shall be made, as the Court thinks fit, to or for the benefit of the complainant, or the person injured, or both.

In any subsequent civil proceedings relating to the same matter, the Court shall take into account any sum which may have been awarded under this section.

Imprisonment in default of payment of fine.

107. In every case punishable under any law in force for the time being with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, the High Court shall be guided by the provisions of sections 64, 65, 68, 69 and 70 of the Indian Penal Code in awarding the period of imprisonment in default of payment of the fine.

Execution of sentences of whipping.

108. Sentences of whipping shall be executed in manner provided by the Code of Criminal Procedure, sections 311, 312 and 313.

Sentence in cases of simultaneous conviction of several offences.

109. When a person is convicted, at one trial, of two or more offences punishable under the same or different sections of any law for the time being in force, the Court may sentence him, for the offences of which he has been convicted, to the several penalties prescribed by such enactment or enactments, which such Court is competent to inflict; such penalties, when consisting of imprisonment, or transportation, or penal servitude, to commence the one after the expiration of the other:

Maximum term of imprisonment.

Provided that in no case shall such person be sentenced to imprisonment for a longer period than fourteen years.

Currency of sentence on escaped convicts.

110. When sentence of death or whipping is passed on an escaped convict, the Court shall direct the new sentence to take effect without waiting for the expiration of the sentence from which he has escaped.

When any other sentence is passed on an escaped convict severer than the sentence from which he has escaped, the Court shall also direct the new sentence to take effect without waiting for the expiration of the sentence from which he escaped.

When the new sentence is not severer than the sentence from which he has escaped, the Court shall direct the new sentence to take effect after such convict has suffered imprisonment, or transportation, or penal servitude, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

When the former sentence on the escaped convict is or includes transportation or penal servitude for life and the Court does not sentence him to death, the new sentence shall direct that he be, as soon as practicable, sent back to the place from which he escaped.

EXPLANATION.—For the purpose of this section—

(*a*) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment:

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of imprisonment without solitary confinement; and

(*c*) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

111. When sentence is passed on a person actually undergoing sentence of imprisonment or transportation, and the sentence is for imprisonment or transportation, the Court shall direct such imprisonment or transportation to commence at the expiration of the imprisonment or transportation to which he has been previously sentenced; Sentence on offender already sentenced for another offence.

or, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be for transportation or penal servitude, the Court may direct the sentence to commence immediately, or at the expiration of the imprisonment to which such person has been previously sentenced:

Provided that nothing in this section shall be held to excuse such person from any part of the punishment to which he is liable upon such former or subsequent conviction. Proviso.

112. When any person under the age of sixteen years is sentenced to imprisonment for any offence, the Court may direct that such offender, instead of being imprisoned in the criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Government prescribes with regard to the discipline and training of persons confined therein. Confinement of youthful offenders in reformatories.

All persons confined under this section shall be subject to the rules so prescribed.[a]

113. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead. Sentence of death.

114. If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence. Postponement of capital sentence on pregnant woman.

115. When the trial is concluded, the Court may make such order as it thinks fit for the disposal of any property produced before it, regarding which any offence appears to have been committed. Order for disposal of property regarding which offence committed.

Any order under this section may be in the form of a reference to a Magistrate, who shall in such case deal with the property as if it had been seized by the Police and the seizure duly reported to him.

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[a] See Act No. V of 1876.

EXPLANATION.—In this section the term 'property' includes not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

Expenses of complainants and witnesses.

116. Subject to any rules that may be passed by the Local Government with the previous sanction of the Governor General in Council, the Court may order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purpose of any trial before such Court under this Act.

CHAPTER XI.—OF PREVIOUS CONVICTIONS OR ACQUITTALS.

Person once convicted or acquitted not to be tried for same offence.

117. A person who has once been tried for an offence and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section twenty, or for which he might have been convicted under section twenty-one.

A person convicted or acquitted of any offence may be afterwards tried for any offence for which a separate charge might have been made against him on the former trial under section nineteen, paragraph one.

A person convicted or acquitted of any offence in respect of any act causing consequences which, together with such act, constituted a different offence from that for which such person was acquitted or convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was acquitted or convicted.

A person convicted or acquitted of any offence in respect of any facts may, notwithstanding such acquittal or conviction, be subsequently charged with and tried for any other offence which he may have committed in respect of the same facts, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Illustrations.

(*a.*) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards be charged with the same theft as a servant, or, upon the same facts, with theft simply or with criminal breach of trust.

(*b.*) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when

the murder was committed; he may afterwards be charged with, and tried for, robbery.

(*c.*) A is tried for an assault and convicted. The person afterwards dies. A may be tried again for culpable homicide.

(*d.*) A is tried under section 270 of the Indian Penal Code for malignantly doing an act likely to spread the infection of a disease dangerous to life and is acquitted. The act so done afterwards causes a person permanently to lose his eyesight. A may be charged, under section 325, with voluntarily causing grievous hurt to that person.

(*e.*) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried for the murder of B on the same facts.

(*f.*) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B, on the same facts, unless the case comes within paragraph three.

(*g.*) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(*h.*) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity, on the same facts.

Previous conviction to be set out in charge.

118. If the accused person has been previously convicted of any offence, and if it is intended to prove such previous conviction for the purpose of affecting the punishment which is to be awarded, the fact of the previous conviction must be stated in the charge. If it is omitted, it may be added at any time before sentence is passed, but not afterwards.

Previous conviction or acquittal how proved.

119. A previous conviction or acquittal may be proved by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had, to be a copy of the finding and sentence.

CHAPTER XII.—Of Criminal Lunatics.

Procedure in case of person committed being lunatic.

120. If any person committed for trial appears at his trial to the Court to be of unsound mind and incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness of mind, and if satisfied of the fact, shall give a special judgment that the accused person is of unsound mind and incapable of making his defence; and thereupon the trial shall be postponed.

The trial of the fact of the unsoundness of mind of the accused person shall be deemed to be part of his trial before the Court.

Release of lunatic pending investigation or trial.

121. Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Court, if the offence of which he is accused be bailable, may release him on sufficient security being given that he shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, and for his appearance when required.

Custody of lunatic.

If the offence be not bailable, or if the required bail be not given, the Court shall report the case to the Local Government, and the accused person shall be kept in safe custody in such place as the Local Government directs.

Resumption of trial.

122. Whenever a trial is postponed under section 120, the Court may at any time resume the trial, and require the accused person, if detained in custody, to be brought before the Court; or, if he has been released on security, may require his appearance.

The surety of such person shall be bound, at any time, to produce him to any officer whom the Court appoints to inspect him; and the certificate of such officer shall have the same effect as the certificate of an Inspector General of Prisons or the Visitors of Lunatic Asylums, granted under section one hundred and twenty-seven.

Procedure on accused appearing before Court.

123. If, when the accused person appears or is again brought before the Court, it appears to such Court that he is in a fit state of mind to make his defence, he shall be put on his trial.

If it appears that the accused person is still of unsound mind, and incapable of making his defence, the Court shall again act according to the provisions of section one hundred and twenty-one.

Finding in case of acquittal on ground of being lunatic.

124. Whenever any person is acquitted upon the ground that, at the time at which he is charged with having committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law, the finding shall state specially whether such person committed the act or not.

Person so acquitted to be kept in safe custody.

125. Whenever such finding states that the accused person committed the act charged, the Court before which the trial was held shall, if the act charged would, but for the incapacity found, have amounted to an offence, order him to be kept in safe custody, in such place and manner as the Court thinks fit, and shall report the case for the order of the Local Government.

The Local Government may order such person to be kept in safe custody in a Lunatic Asylum or other suitable place of safe custody.

Lunatic prisoners to be visited by Inspector General.

126. When any person is confined under the provisions of section one hundred and twenty-one or one hundred and twenty-five, the Inspector General of Prisons, if such person is confined in a jail, or the Visitors of the Lunatic Asylums, or any two of them, if he is confined in a Lunatic Asylum, may

visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector General or by two of such Visitors as aforesaid; and such Inspector General or Visitors shall make a special report to the Local Government as to the state of mind of such person.

Procedure where lunatic prisoner is reported capable of making his defence.

127. If such person is confined under section one hundred and twenty-one and such Inspector General or Visitors as aforesaid shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Court, at such time as it appoints, and the Court shall deal with him under the provisions of section one hundred and twenty-three; and the certificate of such Inspector General or Visitors as aforesaid shall be receivable as evidence.

Procedure where lunatic confined under section 125 is declared capable of being discharged.

128. If such person is confined under the provisions of section one hundred and twenty-five, and such Inspector General or Visitors as aforesaid shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon either order him to be discharged, or to be detained in custody, or to be transferred to a public Lunatic Asylum, if he has not been already sent to such an Asylum; and may appoint a commission, consisting of a judicial officer and two medical officers, whereof the chief medical officer attached to the Lunatic Asylum shall be one.

The said commission shall make formal inquiry into the state of mind of such person taking such evidence as is necessary, and shall report to the Local Government, who may order his discharge or detention as to it may seem fit.

Delivery of lunatic to care of relative.

129. Whenever any relative or friend of any person detained under the provisions of section one hundred and twenty-five is desirous that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person detained shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may order that the person detained be delivered to such relative or friend.

Whenever such person is so delivered, it shall be upon condition that he shall be subject to be inspected by such officer, and at such times as the Local Government directs.

The provisions of sections one hundred and twenty-six and one hundred and twenty-eight shall apply to persons detained under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be dealt with as a certificate of the Inspector General of Prisons or the Visitors of Lunatic Asylums, under the said sections.

Procedure where accused does not understand the proceedings.

130. If an accused person, though not insane, cannot be made to understand the proceedings, the Court may proceed with the trial; and if such trial results in a conviction, the Court shall pass thereon such order as it thinks fit.

CHAPTER XIII.—Of Prosecutions in certain Cases.

Prosecutions for offences against the State.

131. A complaint of an offence punishable under chapter VI of the Indian Penal Code, except section one hundred and twenty-seven, or punishable under section two hundred and ninety-four A of the said Code, shall not be entertained, unless the prosecution be instituted by order of, or under authority from, the Governor General in Council or the Local Government, or some officer empowered by the Governor General in Council to order or authorize such prosecution, or unless instituted by the Advocate General.

Prosecution of Judges and public servants.

132. A complaint of an offence of which any Judge or any public servant not removeable from his office without the sanction of the Government is accused as such Judge or public servant, shall not be entertained against him, except with the sanction or under the direction of the Government, or of some officer empowered by the Government, or of some Court or other authority to which he is subordinate, and whose power so to sanction or direct such prosecution the Government does not think fit to limit or reserve.

No such Judge or public servant shall be prosecuted for any act purporting to be done by him in the discharge of his duty, unless with the sanction of the Government.

Sanction when to be given.

The sanction must be given before the commencement of the proceedings.

In this section the expression 'Government' means either the Local Government or the Governor General in Council; and the expressions 'Judge' and 'public servant' have the meanings assigned to them respectively by the Indian Penal Code.

Prosecution for contempts of the lawful authority of public servants.

133. A complaint of any offence described in chapter X of the Indian Penal Code, not falling within section 175, 178, 179 or 180 of that Code, shall not be entertained by any High Court, except with the sanction or on the complaint of the public servant concerned, or of his official superior.

Nature of sanction necessary.

134. The sanction referred to in section one hundred and thirty-three may be expressed in general terms, and need not name the accused person, and may be given at any time.

Explanation.—In cases under this chapter, the report or application of the public servant shall be deemed sufficient complaint.

Procedure in cases mentioned

135. When the Court is of opinion that there is sufficient ground for inquiring into any charge mentioned in section one hundred and thirty-three,

it may, after making such preliminary inquiry as may be necessary, either commit the case itself, or may send the case for inquiry to any Magistrate having power to try or commit for trial the accused person for the offence charged. in section 133.

Such Magistrate shall thereupon proceed according to law; and the Court may send the accused person in custody, or take sufficient bail for his appearance before such Magistrate; and may bind over any person to appear and give evidence on such trial or inquiry.

The Magistrate receiving the case may, if he is authorized to make transfers of cases, transfer the inquiry to some other competent Magistrate, instead of completing the inquiry himself.

CHAPTER XIV.—Of Bail.

136. The Court may in any case direct that an accused person shall be admitted to bail, or that the bail required by a Magistrate be reduced. Power to direct admission to bail.

137. Whenever, by reason of default of appearance of the person executing the personal recognizance, the Court is of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance, it shall proceed to enforce the penalty, by issuing a warrant for the attachment and sale of the moveable property belonging to such person, which may be found within its jurisdiction. Procedure to compel payment of penalty by accused.

Such warrant may be executed within such limits, and it shall authorize the distress and sale of any moveable property belonging to the accused person without such limits, when endorsed by the Magistrate of the District in which such property is situate.

138. Whenever, by reason of default of appearance by the person bailed, the Court is of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance of the surety or sureties, it shall give notice to the surety or sureties to pay the same, or to show cause why it should not be paid. Procedure to compel payment of penalty by sureties.

If such penalty be not paid, and if no sufficient cause for its non-payment be shown, the Court shall proceed to recover the penalty from such surety or sureties, by issuing a warrant for the attachment and sale of any moveable property belonging to him or them which may be found within its jurisdiction.

Such warrant may be executed within such local limits; and it shall authorize the distress and sale of any moveable property belonging to the surety or sureties without such limits, when endorsed by the Magistrate of the District in which such property is situate.

If such penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the Court, in the civil jail, during a period not exceeding six months:

Remission of part of penalty.

Provided that the Court may, at its discretion, remit any portion of the penalty mentioned in the recognizance of the party or witness, or of the surety or sureties, and enforce payment in part only:

Court may direct Magistrate to levy sum forfeited

The Court may direct any Magistrate to levy the amount due on a forfeited bail-bond executed in respect of attendance before such Court.

Deposit instead of bail.

139. When any person is required to give bail, the Court may permit him to deposit a sum of money or Government promissory notes to such amount as it may fix in lieu of such bail.

CHAPTER XV.—Of Security for keeping the Peace.

Personal recognizances to keep the peace in cases of conviction.

140. Whenever a person accused of rioting, assault, or other breach of the peace, or with abetting the same, or with assembling armed men or taking other unlawful measures with the evident intention of committing the same, is convicted of such offence,

and the Court is of opinion that it is just and necessary to require such person to give a personal recognizance for keeping the peace,

the Court may, in addition to any other order passed in the case, direct that the person so convicted be required to execute a formal engagement, in a sum proportionate to his condition in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding three years, with a provision that, if the same be not given, he shall be kept in simple imprisonment for any time not exceeding three years, unless within such period he executes such formal engagement as aforesaid.

If the accused person be sentenced to imprisonment, the period for which he may be required to execute a recognizance, and the imprisonment in default of executing such recognizance, shall commence on the expiration of his sentence.

Security to keep the peace.

141. Whenever it appears necessary to require security for keeping the peace, in addition to the personal recognizance of the party so convicted, the Court empowered to require a personal recognizance may require security in addition thereto, and may fix the amount of the security-bond to be executed by the surety or sureties; with a provision that, if the same be not given, the party required to find the security shall be kept in simple imprisonment for any time not exceeding three years.

142. Whenever a person is convicted of an offence attended with criminal force, and it appears to the Court that, by such criminal force, any person has been dispossessed of any immoveable property, the Court may cause such person to be restored to possession.

Power to restore possession of immoveable property.

No order made for this purpose shall prejudicè any right over such immoveable property which any person may be able to show in a civil suit.

CHAPTER XVI.—MISCELLANEOUS.

143. Nothing herein contained shall be deemed to affect the Prisoners' Testimony Act, 1869, or the Prisoners' Act, 1871.

Saving of Acts XV of 1869 and V of 1871.

144. The Advocate General may, with the previous sanction of the Governor General in Council or the Local Government, exhibit to the local High Court, against persons subject to the jurisdiction of the said Court, informations for all purposes for which Her Majesty's Attorney-General may exhibit informations on behalf of the Crown in the Court of Queen's Bench or Exchequer.

Advocate General may exhibit informations.

Such proceedings may be taken upon every such information as may lawfully be taken in case of similar informations filed by Her Majesty's Attorney-General in England, so far as the circumstances of the case and the course and practice of proceeding in the said High Courts respectively will admit.

All fines, penalties, forfeitures, debts and sums of money recovered or levied under or by virtue of any such information shall belong to the Government of India.

145. Upon charges preferred by the Advocate General or by any Magistrate or other officer specially empowered by the Government in this behalf, persons committed to custody or held to bail shall be deemed to have been brought before the High Court in due course of law, and (subject to the provisions herein contained as to the amendment and alteration of charges, and subject also to the provisions of section twenty-four) shall be tried upon the charges so recorded.

Effect of charge preferred by Advocate General.

146. At any stage of any proceeding under this Act, before the return of the verdict, the Advocate General may, if he think fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the information or charge; and thereupon all proceedings on such information or charge against the defendant shall be stayed, and he shall be

Power to enter *nolle prosequi.*

discharged of and from the same. But such discharge shall not amount to an acquittal.

Power of Presidency High Court to transfer to itself cases from Police Magistrates.

147. Whenever it appears to the High Court of Judicature at Fort William, Madras or Bombay, that the direction hereinafter mentioned will promote the ends of justice, it may direct the transfer to itself of any particular case from any criminal Court situate within the local limits of its ordinary original criminal jurisdiction, and the High Court shall have power to determine the case so transferred, and to quash or affirm any conviction or other proceeding which may have been had therein, but so that the same be not quashed for want of form, but on the merits only.[a]

Power to issue directions of the nature of a *habeas corpus.*

148. Any of the High Courts of Judicature at Fort William, Madras and Bombay may, whenever it thinks fit, direct—

(*a*) that a prisoner, legally committed and within the local limits of its ordinary original criminal jurisdiction, be brought up before it to be bailed:

(*b*) that a person within such limits be brought up before the Court to be dealt with according to law:

(*c*) that a person illegally or improperly detained in public or private custody within such limits be set at liberty:

(*d*) that a prisoner detained in any gaol situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court:

(*e*) that a prisoner detained as aforesaid be brought before a Court Martial or any Commissioners acting under the authority of any commission from the Governor General in Council, for trial, or to be examined touching any matter depending before such Court Martial or Commissioners respectively:

(*f*) that a prisoner within such limits be removed from one custody to another for the purpose of trial:

(*g*) that the body of a defendant within such limits may be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment;

and neither the High Court nor any Judge thereof shall hereafter issue any writ of *habeas corpus* for any of the above purposes.

Each of the said High Courts shall, as soon as conveniently may be, frame rules to regulate the procedure in cases under this section; and till such rules are framed, the practice of such Courts as to the obtaining, granting

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[a] The High Court has no power to give costs in cases transferred under this section, *Re Louis*, 15 Beng. Appendix 14.

and serving of writs of *habeas corpus,* and as to the returns thereto, shall apply in such cases.

Nothing in this section applies to persons detained under Bengal Regulation III of 1818, Madras Regulation II of 1819, or Bombay Regulation XXV of 1827, or the Acts of the Governor General in Council No. XXXIV of 1850 or No. III of 1858.

Courts and persons before whom affidavits may be sworn.

149. Affidavits and affirmations to be used before any High Court or any officer of such Court, may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge or Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in Chancery in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

Criminal Courts to be open.

150. Every High Court in the exercise of its original criminal jurisdiction shall be deemed an open and public Court, to which the public generally may have access, so far as the same can conveniently contain them :

But the presiding Judge may, if he thinks fit, order that, during the trial of any particular case, no person shall have access to, or be, or remain in, the room or building used by the Court, without the consent or permission of the Court.

Compounding offences.

151. In the case of offences which may lawfully be compounded, injured persons may compound the offence out of Court, or in Court with the permission of the Court.

Such withdrawal from the prosecution shall have the effect of an acquittal of the accused person.

Judges of High Courts to be Justices of the Peace *virtute officii.*

152. Every Judge of a High Court shall, by virtue of his office, be a Justice of the Peace within and for the whole of British India.

THE SCHEDULE.

(*See section* 2.)

ACTS.

Number and year.	Subject or title.	Extent of repeal.
XXXI of 1838 ...	Supreme Courts, Criminal Law ...	So much as has not been repealed.
XXII of 1839 ...	An Act for enabling persons charged with offences to make their defence more effectually.	So much as has not been repealed.
IV of 1849 ...	Criminal Lunatics ...	So much as has not been repealed.
XVI of 1852 ...	An Act for further improving the administration of Criminal Justice in Her Majesty's Courts of Justice in the territories of the East India Company.	So much as has not been repealed.
XVIII of 1859 ...	An Act to amend the law relating to offences declared to be punishable on conviction before a Magistrate.	So much as has not been repealed.
XVIII of 1862 ...	An Act to repeal Act XVI of 1852 in those parts of British India in which the Indian Penal Code is in force, and to re-enact some of the provisions thereof with amendments, and further to improve the administration of Criminal Justice in Her Majesty's Supreme Courts of Judicature.	Sections 1 to 25 (both inclusive): sections 36 to 46 (both inclusive): and sections 54, 55 and 56.
XIII of 1865 ...	An Act to amend the procedure of Her Majesty's High Courts of Judicature in the exercise of their original jurisdiction, and to provide for the exercise of such jurisdiction at places other than the Presidency Towns.	So much as has not been repealed.
IV of 1866 ...	An Act to amend the constitution of the Chief Court of Judicature in the Panjáb and its Dependencies.	Sections 21 to 41 (both inclusive), and section 20, except the first twenty-two words.
XVI of 1866 ...	An Act to relieve the Governor General of India in Council from the duty of signing the commissions mentioned in sections 22 and 44 of the High Courts' Criminal Procedure Amendment Act, 1865.	The whole.

ACTS—(*continued*).

Number and year.	Title.	Extent of repeal.
XXIV of 1866 ...	An Act to amend the procedure of the High Court of Judicature for the North-Western Provinces of the Presidency of Fort William.	Sections 2 to 17 (both inclusive).
XIII of 1869 ...	An Act further to amend the procedure of the High Court of Judicature for the North-Western Provinces.	Sections 1 and 2, and so much of sections 3 and 4 as relates to criminal jurisdiction.
XXII of 1870 ...	An Act to confirm certain laws affecting European British subjects.	Section 3.

STATUTES.

Number and year.	Title or abbreviated title.	Extent of repeal.
13 Geo. III, c. 63	An Act for establishing certain Regulations for the better management of the affairs of the East India Company, as well in India as in Europe.	Section 34. In section 38, the words "and the Chief Justice and other Judges of the said Supreme Court of Judicature."
33 Geo. III, c. 52	*An Act whose title begins with the words* An Act for continuing, *and ends with the words* and Bombay.	Sections 153 and 154.
53 Geo. III, c. 155	*An Act whose title begins with the words* An Act for continuing, *and ends with the words* Company's Charter.	Sections 100, 102, 103.
9 Geo. IV, c. 74	An Act for improving the administration of Criminal Justice in the East Indies.	The whole Act except sections one, seven, eight, nine, twenty-five, twenty-six and fifty-six.

THE INDIAN PORTS ACT, 1875.

CONTENTS.

PREAMBLE.

CHAPTER I.—PRELIMINARY.

SECTIONS.

1. Short title.
2. Present local extent.
   Power to extend this Act.
3. Repeal of Acts.
4. Interpretation-clause.

CHAPTER II.—OF THE POWERS OF THE LOCAL GOVERNMENT.

5. Power to extend this Act.
   Power to extend specially sections 38, 39, 40 and 41.
   Power to withdraw this Act.
6. Limits how to be altered.
7. Power to make Port-rules.

CHAPTER III.—OF PORT OFFICERS, THEIR POWERS AND DUTIES.

8. Appointment of Conservator.
9. Conservator empowered to give directions for certain specified purposes.
   Penalty for disobedience to Conservator's orders.
   Expenses caused thereby to be paid by offender.
   Service of written notice.
10. Power to cut warps, ropes, &c.
11. Power to remove floating timber, &c., or obstruction on shore within limits of port.
    Expenses of removal.
    Penalties for causing obstruction or public nuisance.
12. Recovery of expenses of removal.
    Power to sell timber, &c.
    Proceeds how dealt with.
13. Removal of obstructions lawfully made.
    Compensation how determined.
14. Notice to Conservator, if vessel fouls Government moorings.
    Expense of clearing vessel.
    Penalty.
15. Power to raise wreck, &c., impeding navigation within the port.
    Expense how recoverable.

SECTIONS.

16. Power to board vessels.
17. Power to require crews to prevent or extinguish fire.
18. Powers of Conservator may be exercised by Harbour-Master.
19. Indemnity to Government against default of Harbour-Master, &c.
Proviso.

CHAPTER IV.—RULES FOR THE SAFETY OF SHIPPING AND THE PRESERVATION OF PORTS.

20. Injuring buoys, &c.
21. Wilfully loosening vessel from moorings.
22. Improperly discharging ballast.
23. Graving, &c., vessel within prohibited limits.
24. Boiling pitch, &c., on board vessel within prohibited limits.
25. Drawing spirits by unprotected artificial light.
26. Warping.
27. Leaving out hawser, &c., after sun-set.

Gunpowder.

28. Place of deposit for gunpowder.
29. Government to fix time and manner of landing and shipping powder, &c.
30. Master to make declaration.
31. Officer to give receipt and to account for powder deposited.
32. If by stress of weather powder is not landed, notice to be given.
33. Time, &c., for vessels outward bound to take in powder.
34. Penalties for having prohibited powder on board.
35. Guns not to be discharged in port.
Exception.
Penalty.

Extinguishment of Fires.

36. Penalty on Master omitting to take order to extinguish fire.

Inflammable Oil.

37. Power to make rules for prevention of fire from inflammable oil.

Special Rules.

38. Vessels in certain cases not to be moved without having a pilot, &c., or permission of Harbour Master.
39. Vessels above 200 tons to be provided with force-pump, &c.
40. Unauthorized person not to search for lost stores.
41. Removing stones, &c., or injuring shores of port prohibited.

Publication of Orders.

42. Publication of orders of Local Government.
Penalty for disobedience to rules.

CHAPTER V.—Of Salvage in Ports.

SECTIONS.

43. Salvage payable for wreck, &c.
Register to be kept.
44. Property recovered may, in certain cases, be sold.
Proceeds how applied.

CHAPTER VI.—Of Port-dues and Charges.

45. Levy of port-dues.
46. Local Government may vary port-dues.
Proviso.
47. Accounts of port-dues.
48. Collection of port-dues.
Voucher to be given.
49. Master to report arrival.
50. Conservator may, in certain cases, ascertain draught, and charge expense to Master.
51. Tonnage of vessel liable to port-dues how ascertained
if registered;
if not registered.
52. On refusal to pay port-dues, &c., the Collector may distrain and sell.
53. No port-clearance to be granted until dues, &c., are paid.
54. Port-dues, &c., payable in one port, recoverable by Collector at any other port.
55. Penalty for evading payment of port-dues, &c.
56. Port-due on vessels in ballast.
57. Port-due on vessels not discharging or taking in cargo.
58. Port-dues not chargeable on vessels re-entering from stress of weather.

Hospital Port-dues.

59. Power to impose hospital port-dues.
60. Application of hospital port-dues.

Fees for certain Services.

61. Fees for pilotage, hauling, re-mooring, &c.

CHAPTER VII.—Of Hoisting Signals.

62. Master to hoist number of vessel.
63. Penalty for not hoisting signal.
64. Pilot to require Master to hoist signal.
Pilot may anchor if Master refuses.
65. Punishment of pilot disobeying provisions of this chapter.

CHAPTER VIII.—Of Penalties.

Sections.

66. Offences how triable, and penalties how recovered.
67. Costs of conviction.
68. Damages, &c., payable under this Act, how ascertained and recovered.
69. Costs of distress.
70. Magistrate to determine the amount to be levied in case of dispute.
71. Jurisdiction over offences beyond local limits of jurisdiction.
72. Conviction to be quashed on merits only.
Form of conviction.

CHAPTER IX.—Miscellaneous.

73. Hoisting unlawful colours in port.
74. Foreign deserters.
75. Application of sections 11 and 22.
76. Disputes concerning amount due under section 15 or section 43.
77. Amendment of Act XIII of 1867.

The First Schedule.—Ports, vessels chargeable, rate of port-dues, and frequency of payment.
The Second Schedule.—Enactments repealed.

ACT No. XII of 1875.

Received the Governor General's assent on the 15*th March* 1875.

An Act to consolidate and amend the law relating to Ports and Port-dues.

Whereas it is expedient to consolidate and amend the law relating to Ports and Port-dues; It is hereby enacted as follows:— Preamble.

CHAPTER I.—Preliminary.

1. This Act may be called "The Indian Ports Act, 1875:" Short title.

2. It shall extend— Present local extent.

(*a*) to the ports mentioned in the first schedule hereto annexed, and to such parts of the navigable rivers and channels leading to such ports respectively, as have been declared to be subject to Act No. XXII of 1855 (*for the regulation of Ports and Port-dues*);

Power to extend this Act.

(*b*) to the other ports or parts of rivers or channels to which the Local Government, in exercise of the power hereinafter conferred, applies the provisions of this Act.

But nothing herein contained shall—

(*c*) apply to any vessel belonging to, or in the service of, Her Majesty or the Government of India, or to any vessel of war belonging to any Foreign Prince or State;

(*d*) deprive any person of any right of property or other private right, except as hereinafter expressly provided; or

(*e*) affect any law or rule relating to the Customs, or any order or direction lawfully made or given pursuant thereto.

And nothing contained in any of the following sections (namely), thirty-eight, thirty-nine, forty and forty-one, shall apply to any port, river or channel to which such section has not been specially extended by the Local Government.

Repeal of Acts.

3. The Acts mentioned in the second schedule hereto annexed shall be repealed to the extent specified in the third column thereof.

Every declaration, appointment or rule made under any such Act and now in force shall be deemed to have been made under this Act.

The references made to any Act or provision of an Act hereby repealed shall be read as if made to this Act or the corresponding provision of this Act, as the case may be.

Interpretation-clause.

4. In this Act, unless there be something repugnant in the subject or context—

"Vessel."

"Vessel" includes anything made for the conveyance by water of human beings or of property:

"Master."

"Master," when used in relation to any vessel, means any person (except a Pilot or Harbour-Master) having for the time being the charge or control of such vessel:

"Pilot."

"Pilot" means a person for the time being authorized by the Local Government to pilot vessels:

"Owner."

"Owner" includes also any agent to whom a vessel is consigned:

"Gunpowder."

"Gunpowder" includes also rockets and other combustible ammunition:

"Magistrate."

"Magistrate" means a person exercising powers under the Code of Criminal Procedure not less than those of a Magistrate of the Second Class, and includes, in the Towns of Calcutta, Madras and Bombay, a Magistrate of Police; and

"Port" includes also any part of a river or channel in which this Act is for the time being in force. "Port."

CHAPTER II.—OF THE POWERS OF THE LOCAL GOVERNMENT.

5. With the previous sanction of the Governor General in Council, the Local Government may from time to time, by notification in the official Gazette, Power to extend this Act.

(*a*) extend this Act to any port or to any part of any navigable river or channel leading thereto in which this Act is not in force,[a]

(*b*) extend specially the provisions of any of the following sections (namely), thirty-eight, thirty-nine, forty and forty-one, to any port or to any part of any such river or channel to which such provisions have not been so extended, Power to extend specially sections 38, 39, 40 and 41.

(*c*) withdraw this Act from any port or any part thereof in which it is for the time being in force : Power to withdraw this Act.

Provided that every notification under clause (*a*) or clause (*b*) of this section may define the limits of the port, river or channel to which it refers, and that such limits may extend to high-water-mark.

Such limits may include any piers, jetties, landing-places, wharfs, quays, docks and other works made on behalf of the public for convenience of traffic, for safety of vessels, or for the improvement, maintenance and good government of such port, river or channel, whether within or without high-water-mark, and (subject to any rights of private property therein) any portion of the shore or bank within fifty yards of such line.

EXPLANATION :—In this section 'high-water-mark' means the highest point reached by ordinary spring-tides at any season of the year.

6. The Local Government may from time to time, with the like sanction, and subject to the rights referred to in section five, alter the limits of any port in which this Act may be in force, and declare or describe, by notification in the official Gazette or by means of maps, posts or otherwise, the precise extent of such limits. Limits how to be altered.

7. The Local Government may, from time to time, make such rules, consistent with this Act, as it may think necessary for any of the following purposes, namely,— Local Government empowered to make Port-rules as to—

(*a*) for regulating the time at which, and the manner in which, vessels shall enter into or go out of any port subject to this Act : entering or leaving port

(*b*) for regulating the berths, stations and anchorages to be occupied by vessels in any such port : berths of vessels :

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[a] As to the limits of the port of Bassein, *British Burma Gazette*, 10th July 1875, Part II, p. 131. Tavoy and Mergui declared to be ports under the Act, *ibid.*, 28th August 1875, Part II, p. 163. Limits of port of Tavoy, *ibid.*, 27th November 1875, Part II, p. 218. Limits of port of Puri (Orissa), *Calcutta Gazette*, 8th December 1875, p. 1506.

striking yards, &c.:

(*c*) for striking the yards and top-masts, and for rigging-in the booms and yards, of vessels in any such port; and for swinging or taking-in davits, boats and other things projecting from such vessels:

removal of anchors, &c.:

(*d*) for the removal or proper hanging or placing of anchors, spars, and other things, in or attached to vessels in any such port:

taking in or discharging ballast:

(*e*) for regulating vessels whilst taking-in or discharging ballast or cargo, or any particular kind of cargo, in any such port, and the stations to be occupied by vessels whilst so engaged:

keeping free passage:

(*f*) for keeping free passages of such width as may be deemed necessary within any such port, and along or near to the piers, jetties, landing-places, wharfs, quays, docks, moorings, and other works in or adjoining to the same; and for marking out the spaces so to be kept free:

regulating the anchoring:

(*g*) for regulating the anchoring, fastening, mooring, and unmooring of vessels in any such port:

moving and warping:

(*h*) for regulating the moving and warping of all vessels within any such port and the use of warps therein:

use of mooring buoys:

(*i*) for regulating the use of the mooring buoys, chain and other moorings, in any such port:

rates for use of mooring buoys:

(*j*) for fixing from time to time the rates to be paid for the use of such moorings when belonging to Government, or of any boat, hawser, or other thing belonging to Government:

cargo-boats, &c.:

(*k*) for licensing and regulating cargo and other boats, and catamarans plying for hire in any such port:

fires and lights:

(*l*) for regulating the use of fires and lights within any such port:

signal-lights:

(*m*) for enforcing and regulating the use of signal-lights by vessels at night in any such port:

number of crew:

(*n*) for regulating the number of the crew which must be on board any vessel afloat within the limits of any such port:

possession of gunpowder.

(*o*) for fixing the limits within which vessels shall be prohibited from having on board in any such port any quantity of gunpowder in excess of such quantity as the Local Government prescribes in this behalf.[a]

CHAPTER III.—Of Port Officers, their Powers and Duties.

Appointment of Conservator.

8. The Local Government shall appoint some officer or body of persons to be Conservator of every port subject to this Act, and may suspend or remove such officer or body.

[a] For rules under this section, see *Calcutta Gazette*, 4th August 1875, p. 981: 1st September 1875, p. 1105: 15th September 1875, p. 1149.

Subject to any direction by the Local Government to the contrary—

(*a*) in ports where there is a Master Attendant, such Master Attendant shall be the Conservator:

(*b*) in ports where there is no Master Attendant, but where there is a Harbour-Master, such Harbour-Master shall be the Conservator.

Where the Harbour-Master is not Conservator, the Harbour-Master and his Assistants shall be subordinate to, and subject to the control of, the Conservator.

The Conservator shall be subject to the control of the Local Government, or of any intermediate authority which that Government may appoint.

Conservator empowered to give directions for certain specified purposes.

9. The Conservator of any port subject to this Act may, in respect of any vessel within such port, give directions for carrying into effect any port-rule for the time being in force therein.

Penalty for disobedience to Conservator's orders.

Whoever wilfully, and without lawful excuse, refuses or neglects to obey any lawful direction of such Conservator, after notice thereof has been given to him, shall, for every such offence, be punished with fine which may extend to one hundred rupees, and with a further fine which may extend to one hundred rupees for every day on which he wilfully continues to disobey such direction:

Expenses caused thereby to be paid by offender.

and, in case of such refusal or neglect, the said Conservator may do, or cause to be done, all acts necessary for the purpose of carrying such direction into execution, and may hire and employ proper persons for that purpose; and all reasonable expenses incurred in doing such acts shall be paid by the person so offending.

Service of written notice.

Any written notice of a direction given under this Act, left for the Master of any vessel with any person employed on board thereof, or affixed on a conspicuous place on board of such vessel, shall, for the purposes of this Act, be deemed to have been given to the Master thereof.

Power to cut warps, ropes, &c.

10. The Conservator of any such port may, in case of urgent necessity, cut, or cause to be cut, any warp, rope, cable or hawser, endangering the safety of any vessel in such port or at or near to the entrance thereof.

Power to remove floating timber, &c., or obstruction on shore within limits of port.

11. The Conservator may remove, or cause to be removed, any timber, or obstruction, raft, or other thing floating or being in any part of any such port, which obstructs or impedes the free navigation thereof; or anything which obstructs or impedes the lawful use of any pier, jetty, landing-place, wharf, quay, dock, mooring, or other work, on any part of the shore or bank which has been declared to be within the limits of such port, and is not private property;

Expenses of removal.

and the owner of any such timber or raft or other thing shall be liable to pay the reasonable expenses of such removal;

Penalties for causing obstruction or public nuisance.

and if such owner or any other person has without lawful excuse caused any such obstruction or impediment, or causes any public nuisance affecting or likely to affect such navigation, he shall also be punished with fine which may extend to one hundred rupees.

And the Conservator or any Magistrate having jurisdiction over the offence may cause such nuisance to be abated.

Recovery of expenses of removal.

12. If the owner of any such timber or raft, or the person who has caused any such obstruction, impediment or public nuisance as is mentioned in section eleven, neglects to pay the expense of the removal thereof, within one week after demand, or within fourteen days after such removal has been notified in the official Gazette or in such other manner as the Local Government by general or special order directs, such expenses may be recovered in the same manner as any fine under this Act;

Power to sell timber, &c.

and the Conservator may cause such timber, raft, or other thing, or the materials of any nuisance or obstruction so removed, or so much thereof as may be necessary, to be sold by public auction;

Proceeds how dealt with.

and may retain all the expenses of such removal and sale out of the proceeds of such sale; and shall pay the surplus of such proceeds, or deliver so much of the said timber or other materials as may remain unsold, to the person entitled to receive the same;

and, if no such person appear, shall cause the same to be kept and deposited in such manner as the Local Government directs;

and may, if necessary, from time to time, realize the expenses of keeping the same, together with the expenses of such sale, by a further sale of so much of the said timber or other materials as may remain unsold.

Removal of obstructions lawfully made.

13. If any obstruction or impediment to the navigation of any port subject to this Act has been lawfully made, or has become lawful by reason of the long continuance of such obstruction or impediment, or otherwise, the Conservator shall report the same for the information of the Local Government, and shall, with the sanction of such Government, cause the same to be removed or altered, making to the person suffering damage by such removal or alteration reasonable compensation for the same.

Compensation how determined.

Every dispute arising concerning such compensation, shall be determined according to the law relating to like disputes in the case of land required for public purposes.

Notice to Conservator, if vessel fouls

14. If any vessel hook or get foul of any of the buoys or moorings laid down by or by the authority of the Local Government in any such port, the

Master of such vessel shall not, nor shall any other person, except in the case of emergency, lift such buoy or mooring for the purpose of unhooking or getting clear from the same without the assistance of the Conservator, Government moorings.

and the Conservator, immediately on receiving notice of such accident, shall assist and superintend the clearing of such vessel;

and the Master of such vessel shall, upon demand, pay such reasonable expense as may be incurred in clearing the same. Expense of clearing vessel.

Any Master offending against the provisions of this section shall, for every such offence, be punished with fine which may extend to one hundred rupees. Penalty.

15. If any vessel be wrecked, stranded or sunk in any such port, so as to impede, or be likely to impede, the navigation thereof, the Conservator may cause the same to be raised, removed or destroyed; Power to raise wreck, &c., impeding navigation within the port.

and may recover the same on behalf of the Local Government in the manner provided by section forty-four. Expense how recoverable.

16. The Conservator or any of his Assistants may, whenever he suspects that any offence has been, or is about to be, committed contrary to this Act, or whenever it is necessary for him so to do in the discharge of any duty hereby imposed upon him; Power to board vessels.

and the Collector of Customs, or other officer appointed to collect any port-dues or other charges payable in respect of any vessel under this Act, may, whenever it is necessary so to do, for the performance of any duty hereby imposed upon such Collector or other officer,

either alone or with any other person, board any vessel, or enter any building or place, within the limits of any port subject to this Act.

If the Master of such vessel, or if any person in possession or occupation of any such building or place, without lawful excuse refuse to allow any officer or other person to board or enter such vessel, building or place for the performance of any duty imposed upon him by this Act, he shall for every such offence be punished with fine which may extend to two hundred rupees.

17. For the purpose of preventing or extinguishing fire in any port subject to this Act, the Conservator may require the Master of any ship within the port to place at his disposal such number as he requires, not exceeding three-fourths, of the crew then under the orders of such Master. Power to require crews to prevent or extinguish fire.

Any Master refusing or neglecting to comply with such requisition shall be punished with a fine which may extend to five hundred rupees, and any seaman then under his orders who, after being directed by the Master to obey the

Conservator's orders for the purpose aforesaid, refuses to obey such orders shall be punished with fine which may extend to twenty-five rupees.

Powers of Conservator may be exercised by Harbour-Master.

18. All acts, orders or directions by this Act authorized to be done or given by any Conservator may, subject to his control, be done or given by any Harbour-Master or any Assistant of such Conservator or Harbour-Master;

and any person hereby authorized to do any act may call to his aid such assistance as may be necessary.

Indemnity to Government against default of Harbour-Master, &c.

19. The Government shall not be answerable for any act or default of any Master Attendant, Harbour-Master, or other Conservator of any port subject to this Act; or of any Pilot; or of any Deputy or Assistant of any of the officers above-mentioned; or of any person acting under the authority or direction of any such officer or Assistant, done within the limits of such port;

nor for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers, or other things belonging to Government, within the said limits, which may be used by such vessel:

Proviso.

Provided that nothing in this section shall protect the Secretary of State for India in Council from a suit in respect of any act done by or under the express order or sanction of Government.

CHAPTER IV.—Rules for the Safety of Shipping and the Preservation of Ports.

Injuring buoys, &c.

20. No person shall, without lawful excuse, lift, injure, loosen, or set adrift any buoy, beacon, or mooring, fixed or laid down by, or by the authority of, the Local Government in any port subject to this Act.

Whoever offends against the provisions of this section shall, for every such offence, be liable, in addition to the payment of the amount of damage done, to fine which may extend to two thousand rupees, or to imprisonment for a term which may extend to two years.

Wilfully loosening vessel from moorings.

21. Whoever wilfully and without lawful excuse loosens or removes from her moorings any vessel within any such port without leave or authority from the owner or Master of such vessel, shall, for every such offence, be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to six months.

Improperly discharging ballast.

22. No ballast or rubbish, and no other thing likely to form a bank or shoal, or to be detrimental to navigation, shall without lawful excuse, be cast or thrown into any such port, or into or upon any place on shore, from which the same is liable to be washed into any such port, either by ordinary or high tides, or by storms or land-floods.

Whoever by himself or another so casts or throws the same, and the Master of any vessel from which the same is cast or thrown, shall be punished with fine which may extend to five hundred rupees over and above any expenses which may be incurred in removing the same. If after receiving notice from the Conservator of the port to desist casting or throwing any such ballast or other thing, any Master continues so to cast or throw it, he shall also be liable to simple imprisonment for a term which may extend to two months.

Nothing in this section applies to any case in which such ballast or other thing is cast or thrown into any such port with the consent in writing of the Conservator, or within any limits within which such act may be authorized by the Local Government.

Graving, &c., vessel within prohibited limits.

23. If any person grave, bream, or smoke any vessel in any such port, contrary to the directions of the Conservator, or at any time or within any limits at or within which such act is prohibited by any order of the Local Government, such person, and also the Master of such vessel, shall for every such offence be punished with fine which may extend to five hundred rupees.

Boiling pitch, &c., on board vessel within prohibited limits.

24. If any person boil or heat any pitch, tar, resin, dammer, turpentine, oil or other such combustible matter on board any vessel within any such port, or at any place within its limits where such act is prohibited by the Local Government, or contrary to the order or directions of the Conservator, such person, and also the Master of any vessel on board which such offence is committed, shall for every such offence be punished with fine which may extend to two hundred rupees.

Drawing spirits by unprotected artificial light.

25. If any person, by an unprotected artificial light, draws off spirits on board any vessel within any port subject to this Act, such person, and also the Master of every such vessel, shall for every such offence be punished with fine which may extend to two hundred rupees.

Warping.

26. Every Master of a vessel in any port subject to this Act shall, when required so to do by the Conservator, permit warps to be made fast to such vessel for the purpose of warping any other vessel in the port, and shall not allow any such warp to be let go until required so to do.

Any Master offending against the provisions of this section shall be punished for every such offence with a fine which may extend to two hundred rupees.

Leaving out hawser, &c., after sun-set.

27. No Master of any vessel shall cause or suffer any warp or hawser attached to his vessel to be left out in any port subject to this Act, after sunset, in such a manner as to endanger the safety of any boat or other vessel navigating in such port.

Any Master offending against the provisions of this section shall be punished for every such offence with fine which may extend to two hundred rupees.

Gunpowder.

Place of deposit for gunpowder.

28. The Local Government shall appoint a proper place in which gunpowder in excess of the quantity allowed by rule under section seven, clause (*o*), for any ship in any port subject to this Act, shall be deposited; and shall also appoint an officer to receive the same.[a]

Government to fix time and manner of landing and shipping powder, &c.

29. The Local Government may in such case by order fix the times at or within which, and the manner in which, such gunpowder shall be landed and deposited by any vessel inward bound, and also the times at or within which, and the manner in which, the same shall be taken on board any vessel from such place of deposit.[a]

Master to make declaration.

30. The Master of such vessel shall, upon such gunpowder being deposited, make and sign a declaration in writing that there is not then, to his knowledge or belief, on board such vessel any gunpowder exceeding the quantity allowed by the rule last aforesaid.

Officer to give receipt and to account for powder deposited.

31. The officer with whom such gunpowder is deposited shall give a receipt for the same to the Master or other person making the deposit, and he shall be accountable to such Master or other person for the re-delivery of the same.

If by stress of weather powder is not landed, notice to be given.

32. If any vessel be prevented by stress of weather from landing or depositing such gunpowder, in excess of the quantity allowed as aforesaid, the Master or owner of such vessel shall, so soon as the weather permits, land and deposit the same at the place so appointed as aforesaid, or shall forthwith give notice to the Conservator, or other officer named for that purpose by any order of the Local Government, of his having such gunpowder on board, and shall obey his directions relating to the same.

Time, &c., for vessels outward bound to take in powder.

33. The Local Government may also, in respect to such port, by order, fix the times and places at which, and the manner in which, vessels outward-bound, requiring to take in any gunpowder, exceeding the quantity above-mentioned, shall take in the same, whether such gunpowder has been previously landed from such vessel or not.[a]

Penalties for having prohibited powder on board.

34. The Master of any vessel having on board any gunpowder contrary to the provisions of this Act, shall for every such offence be punished with fine which may extend to two hundred rupees;

and all gunpowder on board any vessel contrary to the provisions of this Act, shall be forfeited to Government, and may be seized by the Conservator,

[a] See *Calcutta Gazette*, 1st September 1875, p. 1105.

or by any Collector of Customs, or by any Custom-house officer, or other officer authorized in that behalf by the Local Government, within the limits of their respective jurisdictions.

35. Whoever, without lawful excuse, discharges any gun, musket, or other fire-arm in any port subject to this Act, or on or from the landing-places, piers, wharfs, or quays thereof, except a gun loaded only with gunpowder for the purpose of making a signal of distress, or for such other purpose as may be allowed by the Local Government, shall, for every such offence, be punished with fine which may extend to fifty rupees.

Guns not to be discharged in port.

Exception.

Penalty.

Extinguishment of fires.

36. The Master of any vessel in which fire takes place while lying in any port, who wilfully omits to take order to extinguish such fire, shall be punished with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty on Master omitting to take order to extinguish fire.

Inflammable Oil.

37. The Local Government may from time to time make rules for regulating—

(*a*) the prevention of injury from fire in ports and places at which vessels entering port with inflammable oil on board are to be moored;

(*b*) the mode in which such oil shall be landed from or shipped on board of such vessels.

Explanation.—"Inflammable oil" includes petroleum, benzole, kerosene and any oil or product of oil that gives off an inflammable vapour at a temperature of less than one hundred degrees of Fahrenheit's thermometer.

Power to make rules for prevention of fire from inflammable oil.

Special Rules.

38. No vessel of the burden of two hundred tons or upwards, shall be moved in any port to which this section has been specially extended without having a Pilot, Harbour-Master, or Assistant of the Master Attendant or Harbour-Master on board; and no vessel of any burden less than two hundred tons and exceeding one hundred tons shall be moved in any such port without having on board a Pilot, Harbour-Master, or Assistant of the Master Attendant or Harbour-Master, unless authority in writing so to do has been obtained from the Conservator or some officer empowered by him to give such authority.

If any vessel, except in case of urgent necessity, be moved contrary to the provisions of this section, the Master of such vessel shall for every such offence be punished with fine which may extend to two hundred rupees, unless

Vessels in certain cases not to be moved without having a pilot, &c., or permission of Harbour-Master.

upon application to the proper officer the Master be unable to procure a Pilot, Harbour-Master, or Assistant of the Master Attendant or Harbour-Master to go on board the said vessel.

Vessels above 200 tons to be provided with force-pump, &c.

39. Every vessel exceeding the burden of two hundred tons and lying in any such port shall be provided with a proper force-pump, hose and appurtenances, for the purpose of extinguishing any fire that may occur on board.

The Master of every such vessel who, having been required by the Conservator to comply with the provisions of this section, without lawful excuse neglects or refuses so to do for the space of seven days after such requisition, shall be punished with fine which may extend to five hundred rupees.

Unauthorized person not to search for lost stores.

40. No person, unless duly authorized by the Conservator, shall creep or sweep in any such port for anchors, cables or other stores lost or supposed to be lost therein.

Whoever offends against the provisions of this section shall be punished with fine which may extend to one hundred rupees.

Removing stones, &c., or injuring shores of port prohibited.

41. No person shall, without the permission of the Conservator, remove or carry away any rock, stones, shingle, gravel, or soil, or any artificial protection from any part of the bank or shore of any such port;

and no person shall sink or bury in any part of such bank or shore, whether the same be public or private property, any mooring-post, anchor or any other thing, or do any other thing which is likely to injure or to be used so as to injure such bank or shore, except with the permission of the said Conservator, and with the aid or under the inspection of such person (if any) as he may appoint to take part in, or overlook the performance of, such work.

Whoever offends against the provisions of this section shall for every such offence be punished with fine which may extend to one hundred rupees, and shall pay the expenses of repairing the injury (if any) done by him to such bank or shore.

Publication of Orders.

Publication of orders of Local Government.

42. Every declaration, order and rule of a Local Government, made in pursuance of this Act, shall be published in the official Gazette; and a copy thereof shall be fixed up in some conspicuous place in the office of the Conservator of every port to which such order relates, and in the Custom-house, if any, of every port subject to this Act.

Penalty for disobedience to rules.

Whoever disobeys any such order or rule shall be liable to a fine not exceeding one hundred rupees for every such offence.

And in the case of disobedience to any rule made under section thirty-seven, the owner or Master of the vessel concerned shall also be punished with

a fine not exceeding two hundred rupees for each day during which such rule is disobeyed.

CHAPTER V.—Of Salvage in Ports.

Salvage payable for wreck, &c.

43. If any anchors, wreck, stores, or other property be recovered by any officer employed by the Local Government for that purpose, from the surface, bed or shore of any port subject to this Act, the Local Government shall be entitled to receive a reasonable sum for salvage, having regard to the place of recovery.

Register to be kept.

A register shall be kept of all property so recovered, in such manner and at such place as the Local Government may direct.

It shall contain a description of such property, and of the times and places where the same has been recovered;

and it shall be open to public inspection at reasonable office-hours, except on Sundays and such holidays as the Local Government may direct.

Property recovered may, in certain cases, be sold.

44. If the property recovered under the last preceding section, or by a Conservator acting under section fifteen, is unclaimed,

or if the person claiming the same fails to pay the amount due to the Local Government in respect thereof,

such property may be sold by public auction, if of a perishable nature, forthwith; and if not of a perishable nature, at any period not less than six months after the recovery thereof;

Proceeds how applied.

and on the realization of the proceeds, the amount due to the Local Government for salvage, or for the expenses incurred under section fifteen, shall be deducted therefrom, and credited to the Local Government, and the balance shall be paid to the person entitled to the property recovered, or, if no such person appear and claim the same, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:

Provided that he makes his claim within one year from the date of the sale.

CHAPTER VI.—Of Port-dues and Charges.

Levy of port-dues

45. In each of the ports mentioned in the first schedule hereto annexed, such port-due not exceeding the amount specified for such port in the third column of the same schedule as the Local Government from time to time directs shall be levied on vessels entering the same port and described in the second column of the same schedule, but not oftener than the time fixed for such port in the fourth column of the same schedule.

Whenever the Local Government, with the previous sanction of the Governor-General in Council, has declared or hereafter declares any port[a] to be subject to this Act, it may, with the like sanction, by the same or any subsequent declaration, further declare—

(*a*) the maximum amount of dues to be levied on vessels entering such port;

(*b*) the conditions and modifications under which such dues shall be levied;[b]

and may also, from time to time, with the like sanction, vary such conditions and modifications; and such dues shall be levied accordingly.

All port-dues now leviable in any of the said ports shall continue to be so leviable until it is otherwise declared in exercise of the powers conferred by this section.

No port-dues or fees shall hereafter be levied in any port except under the authority of this Act.

No order increasing or imposing port-dues under this section shall take effect until the expiration of sixty days from the day on which such order has been published in the local official Gazette.

Local Government may vary port-dues

46. The Local Government may, from time to time, exempt the vessels entering any port subject to this Act from the levy of port-dues and cancel such exemption, or it may from time to time vary the rate at which port-dues shall be levied in any such port, in such manner as, having regard to the receipts and charges on account of that port, it thinks expedient, by reducing or raising the dues, or any of them:[c]

Proviso.

Provided that the rates shall not in any case exceed the amount authorized to be taken by this Act.

Accounts of port-dues.

47. For every port at which port-dues are levied under this Act, a distinct account, to be called the Account of the Port Fund of the port to which it relates, shall be kept by such officer as the Local Government may appoint for that purpose.

This account shall show in complete detail the receipts and charges of the port; and an abstract statement of every such account shall be published annually, as soon after the first of May of each year as may be practicable, in which statement the balance at the close of the year at the credit or debit of the port shall be shown.

If, for any of the purposes of this Act, an advance of money has been or shall be made by Government on account of any port subject to this Act,

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[a] *i. e.*, any other port.

[b] See as to False Point, *Calcutta Gazette*, 29th September 1875, p. 1231; as to Puri, *ibid.* 8th December 1875, p. 1506.

[c] See as to Chúráman, Chánnua, Sartha, Laichunpur, Subarnrekha, Dhamra and its subsidiary ports, *Calcutta Gazette*, 8th December 1875, p. 1504.

simple interest upon that advance, or upon so much of it as remains or shall remain unrepaid, at such rate as the Governor General in Council may determine, shall be charged in the Port Fund Account thereof.

All expenses, including the pay and allowances of all persons upon the establishment of the port, the cost of buoys, beacons, lights and all other works maintained chiefly for the benefit of vessels being in, or entering, or leaving the port, or passing through the rivers or channels leading thereto, but excluding receipts and expenses on account of pilotage, incurred for the sake of every such port, shall be charged in the Port Fund Account of that port.

And all money, including salvage-money, proceeds of waifs, and fines, received under this Act, at or on account of every such port, shall be credited in the Port Fund Account of that port.

The Local Government may direct that for the purposes of this section any number of ports shall be regarded as constituting a single port; and thereupon all sums received on account of port-dues at any of the same ports shall form a common fund which shall be available for the payment of all charges incurred on account of any of the same ports, and such balance as may remain after payment of such expenses may be temporarily invested in such manner as the Local Government may from time to time direct.

Collection of port-dues.

48. The Collector of Customs at every such port, or such other officer as the Local Government appoints in this behalf,[a] shall collect the port-dues above-mentioned.

Voucher to be given.

The officer to whom any such port-dues are paid shall grant to the person paying the same a proper voucher in writing under his hand, describing the name of his office, the port or place at which the port-dues are paid, and the name, tonnage and other proper description of the vessel in respect of which such payment is made.

Master to report arrival.

49. Within twenty-four hours after the arrival within the limits of any port subject to this Act of any vessel liable to the payment of port-dues under this or any subsequent Act, the Master of such vessel shall report such arrival to the Conservator of such port.

Any Master without lawful excuse failing to make such report within the time aforesaid shall for every such offence be punished with fine which may extend to one hundred rupees.

Nothing in this section applies to tug-steamers, ferry-steamers or river-steamers plying in any of the ports subject to this Act.

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[a] As to False P oint, see *Calcutta Gazette*, 8th December 1875, p. 1502.

Conservator may in certain cases ascertain draught and charge expense to Master.

50. If any vessel liable to the payment of port-dues is in any such port without proper marks on the stem and stern-posts thereof for denoting her draught, the Conservator may cause the same to be ascertained by means of the operation of hooking, and the Master of such vessel shall be liable to pay the expenses of such operation.

Tonnage of vessel liable to port-dues how ascertained

51. In order to ascertain the tonnage of any vessel liable to pay port-dues, the following rules shall be observed :—

if registered;

(*a*).—If such vessel be a British registered vessel, or a vessel registered under Act No. X of 1841 or Act No. XI of 1850, or under the laws for the time being in force for the registration of vessels in India, the Conservator may require the owner or Master of such vessel or any person having possession of her register, to produce such register for inspection. If any such owner, Master or other person neglect or refuse to produce such register, or otherwise to satisfy the Conservator as to what is the true tonnage of the vessel in respect of which such port-dues are payable, he shall be punished with fine which may extend to one hundred rupees, and the Conservator may cause such vessel to be measured, and the tonnage thereof to be ascertained; and in such case the owner or Master of such vessel shall also be liable to pay the expenses of such measurement.

if not registered.

(*b*).—If such vessel be not a British registered vessel, or a vessel registered under Act No. X of 1841 or Act No. XI of 1850, or under the laws for the time being in force for the registration of vessels in India, and the owner or Master thereof fail to satisfy the Conservator as to what is her true tonnage according to the mode of measurement prescribed by the law in force for the time being for regulating the measurement of British registered vessels, the Conservator shall cause such vessel to be measured and the tonnage thereof, according to the mode aforesaid, to be ascertained; and in such case, the owner or Master of such vessel shall be liable to pay the expenses of such measurement.

On refusal to pay port-dues, &c., the Collector may distrain and sell.

52. If the Master of any vessel, in respect of which any port-dues or charges are payable under this Act refuses or neglects to pay the same on demand, the Collector of Customs, or other person authorized to collect such port-dues, fees or charges, may distrain or arrest such vessel, and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount due is paid;

and in case any part of the said port-dues or charges, or of the costs of the distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest so made, the Collector

of Customs, or other such person as aforesaid, may cause the vessel or other thing so distrained or arrested to be sold, and with the proceeds of such sale may satisfy the port-dues, charges and costs, including the costs of sale remaining unpaid, and shall render the surplus (if any) to the Master of such vessel upon demand.

53. The officer of Government, whose duty it is to grant a port-clearance for any vessel, shall not grant such clearance—

No port-clearance to be granted until dues, &c., are paid.

(*a*) until her owner or Master, or some other person, has paid or secured to the satisfaction of such officer the amount of all port-dues, fees and charges, and of all fines, penalties and expenses to which such vessel or her owner or Master is liable under this Act;

(*b*) until all expenses, which by the Merchant Shipping Act, 1854, section 228, are to be borne by her owner, incurred since her arrival in the port from which she seeks clearance, have been duly paid.

54. If the Master of any vessel in respect of which any port-dues or charges are payable causes her to leave any port without having discharged such dues, fees or charges, the Collector of Customs or other officer authorized to collect the same may require in writing the Collector of Customs or other officer as aforesaid, in any other port in British India to which she may proceed or in which she may be, to levy such dues or charges.

Port-dues, &c., payable in one port recoverable by Collector at any other port.

Every Collector or other officer to whom such requisition shall be directed shall proceed to levy such dues or charges in the manner prescribed in section fifty-two; and a certificate purporting to be made and signed by the Collector of Customs or other officer as aforesaid of the port where the port-dues or charges became payable, stating the amount so payable, shall be sufficient *primâ facie* proof of such amount in any proceeding under the said section, and also (in case the amount payable is disputed) in any subsequent proceeding under section seventy.

55. If the Master of any such vessel evades the payment of any port-dues or charges payable under this Act, he shall be liable on conviction to a penalty not exceeding five times the amount so payable.

Penalty for evading payment of port-dues, &c.

In any proceeding before a Magistrate for the adjudication of such penalty, any such certificate as is mentioned in section fifty-four stating that the Master has evaded such payment, shall be sufficient *primâ facie* proof of the evasion, unless the Master shows to the satisfaction of the Magistrate that the departure of the vessel without having discharged the dues or charges payable was caused by stress of weather or that there was lawful or reasonable ground for such departure.

Any Magistrate having jurisdiction under this Act in any port to which the vessel may proceed or in which she may be found, shall be deemed to have jurisdiction in any proceeding under this section.

Port-due on vessels in ballast.

56. Vessels entering any port subject to this Act (other than the ports in British Burma) in ballast and not carrying passengers, shall be charged with a port-due not exceeding three-fourths of the port-due with which they would otherwise be chargeable.

Port-due on vessels not discharging or taking in cargo.

57. When any vessel enters any port subject to this Act, but does not discharge or take in any cargo or passenger therein (with the exception of such unshipment and reshipment as may be necessary for purposes of repair), the port-due chargeable in respect of such vessel shall be at a rate equal to one-half the rate chargeable in respect of other vessels:

Provided that no vessel entering any of the ports subject to the Governor of Fort St. George in Council and leaving the same within forty-eight hours without discharging or taking in any passengers or cargo, shall be charged with any port-dues.

Port-dues not chargeable on vessels re-entering from stress of weather.

58. No port-due shall be chargeable in respect of any vessel which, having left any port, is compelled to re-enter it by stress of weather or in consequence of having sustained any damage.

Hospital Port-dues.

Power to impose hospital port-dues.

59. The Local Government may, from time to time, by notification in the official Gazette, order that there shall be paid in respect of every ship entering any port subject to this Act, within a reasonable distance of which there may be a public hospital or dispensary suitable for the reception or relief of seamen requiring medical aid, such further port-dues not exceeding one anna per ton as the Local Government thinks fit.

Such port-dues shall be called Hospital Port-dues.

No order imposing or increasing hospital port-dues shall take effect until the expiration of sixty days from the day on which such order has been published in the official Gazette.

Whenever the Local Government is satisfied that proper provision has been made by the owners or agents of any ship or class of ships for giving medical aid to the seamen employed on board such ship or class of ships, it may, by notification in the official Gazette, exempt such ship or class of ships from any payment under this section. The Local Government may, by like notification, withdraw any such exemption.

Application of hospital port-dues.

60. Such hospital port-dues shall be applied, as the Local Government may direct, to the support of any such hospital or dispensary as aforesaid, or

otherwise for providing sanitary superintendence and medical aid for the shipping in such port and for the seamen belonging to such ships, whether such seamen are ashore or afloat.

Fees for certain Services.

61. Within any port subject to this Act, fees may be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring, and other services rendered to vessels, at such rates as the Local Government may, from time to time, direct :

Fees for pilotage, hauling, re-mooring, &c.

Provided that, in the case of fees for pilotage, the previous sanction of the Governor General in Council has been obtained.

The fees now chargeable for such services shall continue to be chargeable unless and until they are altered in exercise of the power conferred by the former part of this section.

CHAPTER VII.—Of Hoisting Signals.

62. The Master of every inward or outward-bound vessel, on arriving within signal-distance of any signal station established within the limits of the river Hugli, or within the limits of any part of a river or channel subject to this Act shall, on the requisition of the pilot in charge of the vessel, signify the name of the vessel by hoisting the number by which she is known, or by adopting such other means to this end as may be practicable and usual, and shall keep the signal flying until it is answered from the signal-station.

Master to hoist number of vessel.

63. Any Master of a vessel arriving as aforesaid, who refuses or neglects to conform to the above rule, shall be liable on conviction, for each instance of such refusal or neglect, to a fine not exceeding one thousand rupees.

Penalty for not hoisting signal.

64. Every pilot in charge of a vessel shall require the number of the vessel of which he is in charge to be duly signalled as provided under section sixty-two.

Pilot to require Master to hoist signal.

When, on a requisition from the pilot to that effect, the Master of a vessel refuses to hoist the number of a vessel, or to adopt such other means of making her name known as may be practicable and usual, the pilot in charge of such vessel may, on arrival at the first place of safe anchorage, anchor the vessel and refuse to proceed on his course until the requisition has been complied with.

Pilot may anchor if Master refuses.

65. Any pilot in charge of a vessel who disobeys, or abets within the meaning of the Indian Penal Code disobedience to, any of the provisions of this chapter, shall be liable to a penalty not exceeding five hundred rupees for

Punishment of pilot disobeying provisions of this chapter.

each instance of such disobedience or abetment, and in addition shall be liable to dismissal from his appointment.

CHAPTER VIII.—Of Penalties.

Offences how triable, and penalties how recovered.

66. All offences against this Act shall be triable by a Magistrate. And any Magistrate may, by warrant under his hand, cause the amount of any such penalty imposed upon the owner or Master of any vessel, for any offence committed on board of such vessel, or in the management thereof, or otherwise in relation thereto, whereof such owner or Master is convicted, to be levied by distress and sale of such vessel, and the tackle, apparel and furniture thereof, or so much thereof as is necessary.

Costs of conviction.

67. In case of any conviction under this Act, the convicting Magistrate may order the offender to pay the costs of such conviction, in addition to any fine or expenses to which he may be liable.

Such costs may be assessed by the Magistrate, and may be levied and recovered in the same manner as any fine under this Act.

Damages, &c., payable under this Act, how ascertained and recovered.

68. Whenever any person is liable, under the provisions of this Act, to pay any sum of money, damages or expenses not exceeding one thousand rupees, the same may be recovered and levied in the same manner as any fine under this Act, and, if necessary, the amount thereof may be fixed and assessed by the Magistrate before whom the case is tried.

Costs of distress.

69. Whenever any fine, damages or expenses is or are levied under this Act, by distress and sale, the costs of such distress and sale may be levied in addition to such fine, damages or expenses, and in the same manner.

Magistrate to determine the amount to be levied in case of dispute.

70. If any dispute arise concerning the amount leviable by any distress or arrest under this Act, or the charges or costs payable under the last preceding section, the person making such distress or using such arrest may detain the goods distrained or arrested, or the proceeds of the sale thereof, until the amount to be levied has been determined by a Magistrate, who, upon application made to him for that purpose, may determine such amount, and award such costs to be paid by either of the parties to the other of them as he thinks reasonable; and payment of such costs, if not paid on demand, shall be enforced in the same manner as any penalty under this Act.

Jurisdiction over offences beyond local limits of jurisdiction.

71. Any person offending against the provisions of this Act, in any port, river or channel subject to this Act, shall be punishable by any Magistrate having jurisdiction over any district or place adjoining such port, river or channel, or adjoining either side of that part of the river or channel in which such offence is committed.

Such Magistrate may exercise all the powers of a Magistrate under this Act, in the same manner and to the same extent as if the offence had been committed locally within the limits of his jurisdiction, notwithstanding the offence may not have been committed locally within such limits; and in case any such Magistrate exercise the jurisdiction hereby vested in him, the offence shall be deemed, for all purposes, to have been committed locally within the limits of his jurisdiction.

Conviction to be quashed on merits only.

72. No conviction, order or judgment of any Magistrate under this Act shall be quashed for error of form or procedure, but only on the merits;

Form of conviction.

and it shall not be necessary to state, on the face of the conviction, order or judgment, the evidence on which it proceeds.

If no jurisdiction appears on the face of the conviction, order or judgment, but the depositions taken supply that defect, the conviction, order or judgment shall be aided by what so appears in such depositions.

CHAPTER IX.—Miscellaneous.

Hoisting unlawful colours in port.

73. If any vessel belonging to any of Her Majesty's subjects, or sailing under British colours, hoist, carry, or wear, within the limits of any port subject to this Act, any flag, jack, pendant or colours, the use whereof on board such vessel has been prohibited by the Statute 17th & 18th of Victoria, chapter 104, or any other Statute now or hereafter to be in force, or by any proclamation made or to be made in pursuance of any such Statute, or by any of Her Majesty's Regulations in force for the time being, the Master of such vessel shall, for every such offence, be punished with fine which may extend to fifty rupees.

Such fine shall be in addition to any other penalty recoverable under the said Statute or any future Statute to be made in that behalf.

Any officer of Her Majesty's Navy within the limits of such port, or the Conservator of such port, may enter on board any such vessel, and seize and take away any flag, jack, pendant or colour so unlawfully hoisted, carried or worn on board the same.

Foreign deserters.

74. Any Magistrate, upon an application being made to him by the Consul of any Foreign Power to which the Foreign Deserters' Act, 1852, has by an order of Her Majesty in Council been, or shall hereafter be, declared to be applicable, or by the representative of such Consul, and upon complaint on oath of the desertion of any seaman, not being a slave, from any ship of such Foreign Power, may, until a revocation of such Order in Council has

been publicly notified, issue his warrant for the apprehension of any such deserter;

and, upon due proof of the desertion, may order him to be conveyed on board the vessel to which he belongs, or, at the instance of the Consul, to be detained in custody till the vessel is ready to sail, or, if the vessel has sailed, for a reasonable time not exceeding one month:

Provided that a deposit be first made of such sum as the Magistrate deems necessary for the subsistence of the deserter during such detention;

Provided also that the detention of such deserter shall not be continued beyond twelve weeks.

Application of sections 11 and 22.

75. The provisions contained in sections eleven and twenty-two shall be applicable to all ports heretofore or hereafter declared by the Local Government to be ports for the shipment and landing of goods, but not otherwise subject to this Act, and may be enforced by any Magistrate to whose ordinary jurisdiction any such port is subject.

Any penalties imposed by him, and any expenses incurred by his order under the said provisions, shall be recoverable respectively in the manner provided in sections sixty-six and sixty-eight.

In any of the said ports for the shipment and landing of goods the consent referred to in section twenty-two may be given by the principal officer of customs at such port or by any other officer appointed in that behalf by the Local Government.

Disputes concerning amount due under section 15 or section 43.

76. Any dispute arising concerning the amount due under section fifteen or section forty-three shall be determined by a Magistrate upon application made to him for that purpose by either of the disputing parties.

Amendment of Act XIII of 1867.

77. Act XIII of 1867, section one, shall be read as if, for the words "and such port-due," the following words were substituted, namely,—"The port-due leviable under the Indian Ports Act, 1875, in either of the ports of Maulmain and Bassein."

THE FIRST SCHEDULE.

(*See section 2*).

PART I.—BRITISH BURMA.[a]

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
Maulmain ...	Sea-going vessels of ten tons and upwards, but less than twenty-five tons.	Not exceeding four annas per ton.	Once in sixty days.
	Sea-going vessels of twenty-five tons and upwards.	Not exceeding five annas six pie per ton.	Ditto.
Rangoon ...	Sea-going vessels of ten tons and upwards.	Not exceeding six annas per ton.	Ditto.
Kyook Phyoo ...	Ditto ...	Not exceeding four annas per ton.	Ditto.
Akyab ...	Ditto ...	Ditto ...	Ditto.
Bassein ...	Sea-going vessels of ten tons and upwards, but less than twenty-five tons.	Ditto ...	Ditto.
	Sea-going vessels of twenty-five tons and upwards.	Not exceeding five annas six pie per ton.	Ditto.

PART II.—THE LOWER PROVINCES.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
Chittagong ...	Sea-going vessels of ten tons and upwards.	Not exceeding four and a half annas per ton.	Once in sixty days.
Port Canning ...	Sea-going vessels of twenty tons and upwards.	Not exceeding four annas per ton; provided that in the case of *dhonis* and country vessels employed in the coasting trade, the rate shall be one-half the rate chargeable in respect of other vessels.	Whenever the vessel enters the port, except in the case of *dhonis* and country vessels employed in the coasting trade, which shall not be chargeable with port-dues at the same port more than once in ninety days.

[a] As to Tavoy and Mergui, see *British Burma Gazette*, 28th August 1875, Part II, p. 163.

THE FIRST SCHEDULE,—*continued.*

(*See section* 2).

PART II.—THE LOWER PROVINCES,—*continued.*

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chaageable in respect of same vessel.
Port Canning—*continued.*	Tug-steamers and river-steamers belonging to Port Canning.	Not exceeding four annas per ton.	Once between the 1st January and the 30th June, and once between the 1st July and the 31st December in each year.
Calcutta ...	Sea-going vessels of twenty tons and upwards.	Not exceeding four annas per ton; provided that in the case of *dhonis* and country vessels employed in the coasting trade, the rate shall be one-half the rate chargeable in respect of other vessels.	Whenever the vessel enters the port, except in the case of *dhonis* and country vessels employed in the coasting trade, which shall not be chargeable with port-dues at the same port more than once in sixty days.
	Tug-steamers and river-steamers.	Not exceeding four annas per ton.	Once between the 1st January and the 30th June, and once between the 1st July and 31st December in each year.
Cuttack Ports,—namely, Balasore, Chúráman, Laichhunpur, Chánua, Subarnrekha, Dhámra and Sartha.	Sea-going vessels of three hundred maunds and upwards.	Not exceeding six annas per hundred maunds.	Whenever the vessel enters the port.

PART III.—THE MADRAS PRESIDENCY.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
Eastern Group— 1. Ganjam ...	Sea-going vessels of fifteen tons and upwards.	Not exceeding three annas per ton; provided that in the case of vessels employed in the coasting trade, not being steamers, the rates shall be one-half the rates chargeable in respect of other	(*a.*) No coasting steamer having paid port-dues at any port shall be chargeable with port-dues again at the same or at any other port of the same group within thirty days.

THE FIRST SCHEDULE,—*continued.*

(*See section* 2).

PART III,—THE MADRAS PRESIDENCY,—*continued.*

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
Eastern Group continued			
1. Ganjam—*contd.*		vessels: provided also that any steamer engaged in the coasting trade, when it enters any of the ports of the Eastern and Western Groups, shall pay the highest rate of port-dues leviable at any port of such group and an addition of half of such highest rate.	(*b*) No coasting vessel other than a coasting steamer shall be chargeable with port-dues at the same port more than once in sixty days. (*c*.) No vessel other than a coasting vessel or a coasting steamer shall be chargeable with port-dues at the same port more than once in ninety days. In the above rules the expression "coasting vessel" means any vessel which at any port discharges cargo exclusively from, or takes in cargo exclusively for, any port on the Continent of India or in the Island of Ceylon.
2. Gopalpur ...	Sea-going vessels of fifteen tons and upwards.	Ditto ...	
3. Calingapatam ...	Ditto ...	Ditto ...	
4. Bimlipatam ...	Ditto ...	Ditto ...	
5. Vizagapatam ...	Ditto ...	Ditto ...	
6. Coconada ...	Ditto ...	Ditto ...	
7. Coringa* ...			
8. Masulipatam ...	Ditto ...	Ditto ...	
9. Madras ...	Ditto ...	Ditto ...	
10. Cuddalore ...	Ditto ...	Ditto ...	
11. Porto Novo ...	Ditto ...	Ditto ...	
12. Tranquebar ...	Ditto ...	Ditto ...	
13. Negapatam ...	Ditto ...	Ditto ...	
14. Nagore* ...			
15. Tuticorin ...	Ditto ...	Ditto ...	
Western Group—			
1. Mangalore ...	Ditto ...	Ditto ...	
2. Cannanore ...	Ditto ...	Ditto ...	
3. Tellicherry ...	Ditto ...	Ditto ...	
4. Calicut ...	Ditto ...	Ditto ...	
5. Beypore* ...			
6. Cochin ...	Ditto ...	Ditto ...	

* NOTE.—As regards the levy of port-dues, each of the following pairs of ports (namely)—Coconada and Coringa, Negapatam and Nagore, Calicut and Beypore—shall be treated as if it were only one port; every vessel in respect of which such dues have been charged and taken at one of any of the said pairs being exempted from the charge on entering the other of the same pair.

THE FIRST SCHEDULE,—*continued.*

(*See section* 2).

PART IV.—THE BOMBAY PRESIDENCY.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
Bombay ...	Sea-going vessels of ten tons and upwards (except fishing boats).	Not exceeding four annas per ton, and not less than two annas per ton for each class of vessels, as the Trustees incorporated under the Bombay Port Trust Act, 1873, may direct.	Once in the same month.
	Tug-steamers, Ferry-steamers and River steamers.	Ditto ...	Once between the 1st January and the 30th June, and once between the 1st July and 31st December in each year.
Northern Group of Ports—			
1. Gogo ...	Sea-going vessels of ten tons and upwards (except fishing boats).	Not exceeding three annas per ton: provided that a coasting steamer whenever it enters any port shall be chargeable with the highest rate of port-dues leviable at any port of the group to which such port belongs and an addition of one-half of such highest rate.	Once in thirty days at the same port. Provided that no coasting vessel or coasting steamer, having paid port-dues at any port, shall be chargeable with port-dues again at the same or any other port of the same group within thirty days.
2. Bávliári ...	Ditto ...	Ditto ...	Ditto.
3. Khun ...	Ditto ...	Ditto ...	Ditto.
4. Tankária ...	Ditto ...	Ditto ...	Ditto.
5. Dehegám ...	Ditto ...	Ditto ...	Ditto.
6. Dehej ...	Ditto ...	Ditto ...	Ditto.
7. Broach ...	Ditto ...	Ditto ...	Ditto.
8. Bhagwá ...	Ditto ...	Ditto ...	Ditto.
9. Surat ...	Ditto ...	Ditto ...	Ditto.
10. Matwád ...	Ditto ...	Ditto ...	Ditto.

THE FIRST SCHEDULE,—*continued.*

(*See section* 2).

PART IV.—THE BOMBAY PRESIDENCY,—*continued.*

Name of port.	Vessels chargeable.	Rate of port-dues.	Date [illegible] charge-able in respect of same vessel.
Northern Group of Ports.—continued.			
11. Bulsar ...	Sea-going vessels of ten tons and upwards (except fishing boats).	Not exceeding three annas per ton: provided that a coasting steamer whenever it enters any port shall be chargeable with the highest rate of port-dues leviable at any port of the group to which such port belongs and an addition of one-half of such highest rate.	Once in thirty days at the same port. Provided that no coasting vessel or coasting steamer, having paid port-dues at any port, shall be chargeable with port-dues again at the same or any other port of the same group within thirty days.
12. Umarsári ...	Ditto ...	Ditto ...	Ditto.
13. Kolak ...	Ditto ...	Ditto ...	Ditto.
14. Kálai ...	Ditto ...	Ditto ...	Ditto.
15. Maroli ...	Ditto ...	Ditto ...	Ditto.
16. Umbargám ...	Ditto ...	Ditto ...	Ditto.
17. Gholwad ...	Ditto ...	Ditto ...	Ditto.
18. Dáhánu creek...	Ditto ...	Ditto ...	Ditto.
19. Tárápur ...	Ditto ...	Ditto ...	Ditto.
20. Alivárá Navápur	Ditto ...	Ditto ...	Ditto.
21. Sátpáti creek ...	Ditto ...	Ditto ...	Ditto.
22. Máhim (Kelva)	Ditto ...	Ditto ...	Ditto.
23. Kelva ...	Ditto ...	Ditto ...	Ditto.
24. Dántivra ...	Ditto ...	Ditto ...	Ditto.
25. Arnála ...	Ditto ...	Ditto ...	Ditto.

THE FIRST SCHEDULE,—*continued.*

(*See section* 2).

PART IV.—THE BOMBAY PRESIDENCY,—*continued.*

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
Southern Group of Ports—			
1. Bandora ...	Sea-going vessels of ten tons and upwards (except fishing boats).	Not exceeding three annas per ton: provided that a coasting steamer whenever it enters any port shall be chargeable with the highest rate of port-dues leviable at any port of the group to which such port belongs and an addition of one-half of such highest rate.	Once in thirty days at the same port. Provided that no coasting vessel or coasting steamer, having paid port-dues at any port, shall be chargeable with port-dues again at the same or any other port of the same group within thirty days.
2. Veráva ...	Ditto ...	Ditto ...	Ditto.
3. Manori .	Ditto ...	Ditto ...	Ditto.
4. Utan ...	Ditto ...	Ditto ...	Ditto.
5. Bassein ...	Ditto ...	Ditto ...	Ditto.
6. Bhiwandi ...	Ditto ...	Ditto ...	Ditto.
7. Kallian ...	Ditto ...	Ditto ...	Ditto.
8. Tanna ...	Ditto ...	Ditto ...	Ditto.
9. Trombay ..	Ditto ...	Ditto ...	Ditto.
10. Panwel ...	Ditto ...	Ditto ...	Ditto.
11. Karanja ...	Ditto ...	Ditto ...	Ditto.
12. Rewas ...	Ditto ...	Ditto ...	Ditto.
13. Nagothna ...	Ditto ...	Ditto ...	Ditto.
14. Thal ...	Ditto ...	Ditto ...	Ditto.
15. Alibág ..	Ditto ...	Ditto ...	Ditto.
16. Revdandá ...	Ditto ...	Ditto ...	Ditto.
17. Talkhári ...	Ditto .	Ditto ...	Ditto.
18. Bánkot ...	Ditto ...	Ditto ...	Ditto.

THE FIRST SCHEDULE,—*continued.*

(*See section* 2).

PART IV.—THE BOMBAY PRESIDENCY,—*continued.*

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
Southern Group of Ports,—contd.			
19. Kelsi ...	Sea-going vessels of ten tons and upwards (except fishing boats)	Not exceeding three annas per ton : provided that a coasting steamer whenever it enters any port shall be chargeable with the highest rate of port-dues leviable at any port of the group to which such port belongs and an addition of one-half of such highest rate.	Once in thirty days at the same port. Provided that no coasting vessel or coasting steamer, having paid port-dues at any port, shall be chargeable with port-dues again at the same or any other port of the same group within thirty days.
20. Harnai ...	Ditto ...	Ditto ...	Ditto.
21. Anjanwel ...	Ditto ...	Ditto ...	Ditto.
22. Boryá ...	Ditto ...	Ditto ...	Ditto.
23. Jaygarh ...	Ditto ...	Ditto ...	Ditto.
24. Ratnágiri ...	Ditto ...	Ditto ...	Ditto.
25. Purnagarh ...	Ditto ...	Ditto ...	Ditto.
26. Yeshwantgarh ...	Ditto ...	Ditto ...	Ditto.
27. Viziádurg ...	Ditto ...	Ditto ...	Ditto.
28. Devgarh ...	Ditto ...	Ditto ...	Ditto.
29. Achara ...	Ditto ...	Ditto ...	Ditto.
30. Málwan ...	Ditto ...	Ditto ...	Ditto.
31. Nivti ...	Ditto ...	Ditto ...	Ditto.
32. Vengorla ...	Ditto ...	Ditto ...	Ditto.
33. Reri ...	Ditto ...	Ditto ...	Ditto.
34. Tirekhol ...	Ditto ...	Ditto ...	Ditto.

THE FIRST SCHEDULE,—*concluded.*

(*See section* 2).

PART IV.—THE BOMBAY PRESIDENCY,—*concluded.*

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
Southern Group of Ports,—concluded.			
35. Karwar including Baitkhol.	Sea-going vessels of ten tons and upwards (except fishing boats).	Not exceeding three annas per ton : provided that a coasting steamer whenever it enters any port shall be chargeable with the highest rate of port-dues leviable at any port of the group to which such port belongs and an addition of one-half of such highest rate.	Once in thirty days at the same port. Provided that no coasting vessel or coasting steamer, having paid port-dues at any port, shall be chargeable with port-dues again at the same or any other port of the same group within thirty days.
36. Chendya ...	Ditto ...	Ditto ...	Ditto.
37. Ankola ...	Ditto ...	Ditto ...	Ditto.
38. Gangawli ...	Ditto ...	Ditto ..	Ditto.
39. Tadri ...	Ditto ...	Ditto ...	Ditto.
40. Honáwar ...	Ditto ...	Ditto ...	Ditto.
41. Shiráli ...	Ditto ...	Ditto ...	Ditto.
42. Coomta ...	Ditto ...	Ditto ...	Ditto.
43. Murdheshwar ...	Ditto ...	Ditto ...	Ditto.
44. Bhatkal ...	Ditto ...	Ditto ...	Ditto.
Karáchi ...	Ditto ...	Four annas per ton	Once in three months.
	Tug-steamers and river-steamers.	Ditto ...	Once between the 1st January and the 30th day of June, and once between the 1st July and the 31st December in each year.
Aden ...	Sea-going vessels of ten tons and upwards.	Three annas per ton	Once a month.

THE SECOND SCHEDULE.

(*See section* 3).

Number and year.	Subject.	Extent of repeal.
Act XIII of 1839 ...	Port duties ...	So much as has not been repealed.
Act XXII of 1855 ...	Ports and Port-dues ...	Ditto.
Act XIII of 1856 ...	Police in Presidency Towns ...	Section 117.
Act XXX of 1857 ...	Port-dues and Fees (Calcutta)	The whole.
Act XXXI of 1857 ...	Port-dues and Fees (Bombay)	Ditto.
Act XXXV of 1857 ...	Port-dues and Fees (Maulmain, Rangoon, &c.)	Ditto.
Act II of 1858 ...	Port-dues and Fees in certain Ports in the Province of Cuttack.	Ditto.
Act VIII of 1858 ...	Port-dues and Fees (Karáchi)	Ditto.
Act XV of 1858 ...	Port-dues and Fees (Port of Aden).	Ditto.
Act XVIII of 1858 ...	Port-dues and Fees (certain Madras Ports).	Ditto.
Act XIX of 1860 ...	Amending Act XXII of 1855	Ditto.
Act XXV of 1860 ...	Bassein ...	Ditto.
Act XIII of 1867 ...	Amending Act XXV of 1860	In the title, the words "*for the levy of enhanced Port-dues in the Ports of Maulmain and Bassein, and*" The preamble down to and including the words "mentioned; And" Section one down to and including the word "Bassein."
Act VII of 1873 ...	Burma Port-dues ...	The whole.
Bengal Act I of 1862 ...	Hoisting Signals ...	Ditto.
Bengal Act I of 1863 ...	Port-dues and Fees in the Port of Canning on the River Mutlah.	Ditto.
Bengal Act III of 1865 ...	Fire in Ports ...	Sections 3 and 4. Section 8, clauses 1 and 2. Section 10.

THE SECOND SCHEDULE,—*concluded.*

(*See section* 3).

Number and year.	Subject.	Extent of repeal.
Bengal Act IV of 1866 ...	Amending Act XIII of 1856 ...	Section 103.
Bengal Act III of 1867 ...	Ships in Ports ...	Sections 7, 11, 12 and 13.
Bengal Act III of 1872 ...	Amending Bengal Act V of 1870 and Act XXII of 1855	Section 5.
Madras Act I of 1864 ...	Extension of parts of Act XXII of 1855.	The whole.
Madras Act VII of 1867 ...	Port-dues ...	Ditto.
Madras Act VIII of 1867...	Madras Police ...	Section 80.
Bombay Act IV of 1863 ...	Amending Act XV of 1858 (Port-dues, Aden).	The whole.
Bombay Act XI of 1866 ...	Port-dues ...	Ditto.
Bombay Act I of 1873 ...	Bombay Port Trust Act, 1873	Section 75.

ACT No. XIII OF 1875.

Received the Governor General's assent on the 15*th March* 1875.

An Act to amend the law relating to Probates and Letters of Administration.

Preamble.

WHEREAS, under the Indian Succession Act, 1865, the effect of an unlimited grant of probate or letters of administration made by any Court in British India is confined to the province in which such grant is made: And whereas it is expedient to extend over British India the effect of such grants when made by a High Court: And whereas it is also expedient to amend the Court Fees Act, 1870, as to probates, letters of administration and certificates of administration: It is hereby enacted as follows:—

Addition to Act No. X of 1865, section 3.

1. To section 3 of the Indian Succession Act, 1865, the following words shall be added (namely):—"and for the purposes of sections 242, 242A, 246A and 277A, shall include the Court of the Recorder of Rangoon."

Addition to Act No. X of 1865, section 242.

2. To section 242 of the Indian Succession Act, 1865, the following proviso shall be added (namely):

"Provided that probates and letters of administration granted by a High Court after the first day of April, 1875, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India."

Effect of unlimited probates, &c., granted by High Court.

3. The following section shall be inserted after the said proviso (namely):—

Addition to Act No. X of 1865.

"**242A.** [*See above, vol. ii., p.* 782.]

Transmission of certificate by High Court granting probate, &c., to other Courts.

4. After section 246 of the Indian Succession Act, 1865, the following section shall be inserted (namely):—

Addition after section 246 of Act X of 1865.

"**246A.** [*See above, vol. ii., p.* 784.]

Additional statements in petition for probate, &c.

5. After section 277 of the Indian Succession Act, 1865, the following section shall be inserted (namely):—

Addition after section 277 of Act X of 1865.

"**277A.** [*See above, vol. ii., p.* 790.]

Inventory to include property in any part of British India.

6. After section nineteen of the Court Fees Act, 1870, the following chapter shall be inserted (namely):—

Addition to Act No. VII of 1870.

"CHAPTER IIIA.—[*See above, vol. ii., p.* 1195.]

THE INDIAN TARIFF ACT, 1875.

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title.
   Commencement.
   Local extent.
2. [*Repealed.*]
3. Saving clause.
4. Duties specified in schedules to be levied.
5. Goods partially composed of dutiable articles.
6. Power to fix value of dutiable goods and to exempt from customs-duties.

SECTIONS.

7. Power to make rules for ascertaining that imported spirit has been rendered unfit for human consumption.
8. Export of pepper from Cochin.
9. Export of opium.
10. Duties on goods crossing frontiers of foreign European Settlements in Madras and Bombay.
11. Excise-duty on spirit distilled in British India.
12. Amendment of Consolidated Customs Act, sections 27, 57, 66 and 180.

SCHEDULE A.—IMPORT TARIFF.

SCHEDULE B.—EXPORT TARIFF.

ACT No. XVI OF 1875.

Received the Governor General's assent on the 5th August 1875.

An Act to amend the law relating to Customs Duties, and for other purposes.

Preamble.

WHEREAS it is expedient to amend the law relating to the duties of customs on goods imported and exported by sea, and to restrict the export of opium, and to provide for the levy of duties on goods crossing the frontier of certain Foreign European Settlements in India and for fixing a maximum duty of excise on spirit manufactured in British India, and to amend the Consolidated Customs Act; It is hereby enacted as follows :—

Short title.

1. This Act may be called "The Indian Tariff Act, 1875 :"

Commencement.

And it shall come into force on the passing thereof.

Local extent.

This section and section twelve, clause three, apply to the whole of British India.

The rest of this Act extends to the whole of British India except Aden.

2. [*Repealed by Act No. XII of* 1876.]

Saving clause.

3. Nothing herein contained affects Act No. VI of 1873 (*to amend the law relating to the Transhipment of Goods imported by Steamer, and for other purposes*), or authorizes the levy of duties of customs on any article carried from one port in British India to another, except salt, salted fish, opium and spirit.

Duties specified in schedules to be levied.

4. There shall be levied and collected, in every port to which this Act applies, the duties specified in schedules A and B hereto annexed.

Goods partially composed of dutiable articles.

5. Goods not prohibited to be imported into or used in British India, whereof any article liable to duty under this Act forms a part or ingredient, shall be chargeable with the full duty which would be payable on such goods if they were entirely composed of such article, or, if composed of more than one article liable to duty, then with the full duty which would be payable on

such goods if they were entirely composed of the article charged with the highest rate of duty.

6. The Governor General in Council may from time to time, by notification in the *Gazette of India*,

Power to fix value of dutiable goods and to exempt from customs-duties.

(*a*) fix for the purposes of this Act the value of any goods exported or imported by sea on which duties of customs are hereby imposed;

(*b*) exempt any goods imported or exported into or from British India, or into or from any specified port or place therein, from the whole or any part of the duties of customs to which they are liable under this Act or any other law for the time being in force; [a] and

(*c*) cancel any such exemption.

7. The Local Government may from time to time prescribe rules for ascertaining and determining what spirit imported into British India shall be deemed to have been effectually and permanently rendered unfit for human consumption, so as to be subject only to an *ad valorem* duty of ten per cent. under schedule A hereto annexed, and for causing such spirit to be so rendered, if necessary, by their own officers, before the duty of customs leviable thereon is levied, and at the expense of the person importing it.

Power to make rules for ascertaining that imported spirit has been rendered unfit for human consumption.

Such rules, on being published in the official Gazette, shall have the force of law; and whoever wilfully contravenes any such rule shall be liable to fine not exceeding five hundred rupees.

In the absence of any such rules, or if any dispute arises as to their applicability, the executive officer of highest rank in the department of customs in the port shall decide what spirit is subject only to the said *ad valorem* duty, and such decision shall be final.

8. On all pepper exported by sea from the port of Cochin there shall be levied such duty not exceeding nine rupees per khandí as the Governor of Fort Saint George in Council from time to time determines; and at the close of each year, or as soon thereafter as may be convenient, the Collector of Customs at the said port shall, after deducting the expenses of collection, pay the duty collected under this section to the Governments of Travancore and Cochin in such proportion and in such manner as the Governor of Fort Saint George in Council from time to time directs.

Export of pepper from Cochin.

9. No opium shall be exported from any part of British India, unless—

Export of opium.

(*a*) it is covered by a pass granted by an officer appointed in this behalf by the Governor General in Council or the Local Government; or

(*b*) it is exported under the said Act No. VI of 1873, section seven; or

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[a] See Financial Department Notifications No. 190, dated 13th January 1876 (China clay, &c., imported by paper-makers), and No. 101, dated 12th May 1876 (wines of Greece, Austria and Hungary).

(*c*) such export is permitted under the power next hereinafter conferred:

The Governor General in Council may from time to time, by notification in the *Gazette of India*,

(*d*) permit the export of opium from any part of British India on payment of such duty, or on such other terms, as the Governor General in Council thinks fit; and

(*e*) cancel such permission.

Duties on goods crossing frontiers of foreign European Settlements in Madras and Bombay.

10. Duties of customs shall be levied on goods passing by land into or out of Foreign European Settlements situate on the line of coast within the limits of the Presidency of Fort Saint George or the Presidency of Bombay at the rates prescribed in the schedules A and B hereto annexed.

Excise-duty on spirit distilled in British India.

11. And whereas it is expedient that the duty of excise on spirit distilled in British India should bear a due proportion to the customs-duty on spirit imported into British India, it is hereby further enacted as follows:—

Subject to any general rules or special orders which the Governor General in Council may from time to time make in this behalf, the Local Government may from time to time, by notification in the official Gazette, fix the duty of excise leviable on spirit manufactured in all or any of the distilleries situate in the territories under its administration, or in any part of such territories, at any rate not exceeding the rate fixed for imported spirit by schedule A hereto annexed;[a]

and all provisions now in force as to the levy of duty now chargeable on spirit shall apply to spirit upon which the duty declared under this section has not been paid.

Amendment of Consolidated Customs Act, sections 27, 57, 66 and 180.

12. And whereas it is expedient to amend the Consolidated Customs Act in manner hereinafter appearing; it is hereby further enacted as follows:—

Section twenty-seven of the Consolidated Customs Act shall be construed as if, for the words "for which a specific value has not been fixed by the Local Government with the sanction of the Governor General of India in Council," the following words and figures were substituted (namely), "for which a specific value is not fixed by or under the Indian Tariff Act, 1875;"

And the following proviso shall be added to section fifty-seven of the same Act (namely), "Provided also that where such goods are arms, ammunition, or military stores, they may be sold or otherwise disposed of at such place (whether within or without British India) and in such manner as the Local Government may from time to time direct;"

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[a] See *Calcutta Gazette*, 19th April 1876, p. 393: *N.-W. Provinces Gazette*, 20th May 1876, p. 601.

And section sixty-six of the same Act shall be construed as if, for the words and figures "the value of which shall have been fixed under the provisions of section CLXXIX of this Act," the following words and figures were substituted (namely), "for which a specific value has been fixed by or under the Indian Tariff Act, 1875;"

And section one hundred and eighty of the same Act shall be construed as if, for the words "last preceding section," the following words and figures were substituted (namely), "Indian Tariff Act, 1875."

SCHEDULE A.

IMPORT TARIFF.

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
			Rs. A.	
1	APPAREL, INCLUDING HABERDASHERY AND MILLINERY, BUT EXCLUDING BOOTS, SHOES AND HOSIERY	...	*Ad valorem*	5 per cent.
2	ARMS, AMMUNITION AND MILITARY STORES—			
	Fire-arms and parts thereof	...	*Ad valorem*	10 per cent.
	Gunpowder, common ...	℔.	0 5	
	„ sporting ...	„	1 0	
	All other sorts	...	*Ad valorem*	
3	BRUSHES, ALL SORTS ...	...	*Ad valorem*	5 per cent
4	BUILDING AND ENGINEERING MATERIALS—			
	Asphalt	...	*Ad valorem*	
	Cements, all sorts ...	...	„	
	Earthen-ware piping ...	...	„	
5	CABINET-WARE AND FURNITURE	...	*Ad valorem*	
6	CANDLES—			
	Paraffine	℔.	0 5	
	Spermaceti	„	0 8	
	Wax	„	1 0	
	All other sorts, including composition	„	0 5	
7	CANES, RATANS, ARTICLES MADE OF CANE OR RATAN, AND BASKET-WORK—			
	Canes, Malacca	Doz.	1 0	
	Ratans	Cwt.	7 0	
	All other sorts, except common bamboos, which are free	...	*Ad valorem*	
8	CARRIAGES AND COMPONENT PARTS THEREOF, EXCEPT RAILWAY-CARRIAGES AND TRUCKS	...	*Ad valorem*	

IMPORT TARIFF,—*continued.*

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
			Rs. A.	
9	CHEMICAL PRODUCTS AND PREPARATIONS—			
	Acid, sulphuric	℔.	0 2	
	Alkali, country (sajji khár) ...	Cwt.	2 0	
	Alum	,,	4 0	
	Arsenic	,,	25 0	
	,, China mansíl ...	,,	16 0	
	Brimstone, flour ...	,,	7 0	
	,, roll ...	,,	6 0	
	,, rough ...	,,	4 8	
	Copperas, green ...	,,	3 0	
	Sal ammoniac	,,	25 0	
	All other sorts .	...	*Ad valorem*	
10	CHINESE AND JAPANESE-WARE, INCLUDING LACQUERED-WARE, BUT EXCLUDING EARTHENWARE, CHINA AND PORCELAIN	...	*Ad valorem*	
11	CLOCKS, WATCHES AND OTHER TIME-KEEPERS	...	*Ad valorem*	
12	COIR AND ARTICLES MADE OF COIR—			
	Matting	...	*Ad valorem*	
	Yarn of all kinds ...	Cwt.	9 0	
	Other articles made of coir, except cables and rope ...	...	*Ad valorem*	5 per cent.
13	CORAL, REAL	...	*Ad valorem*	
14	CORDAGE AND ROPE, MADE OF ANY VEGETABLE-FIBRE, EXCEPT COTTON AND JUTE—			
	Coir-cables, tarred ...	Cwt.	10 0	
	Coir-rope	,,	10 0	
	Cordage, hemp, European ...	,,	20 0	
	,, Manilla ...	,,	25 0	
	Twine, European, Sail ...	℔.	0 8	
	All other sorts	...	*Ad valorem*	
15	CORK AND ARTICLES MADE OF CORK—			
	Bottle-corks	Gross.	1 8	
	Vial-corks	,,	0 8	
	All other sorts	...	*Ad valorem*	
16	COTTON AND ARTICLES MADE OF COTTON —			
	Cotton-hosiery	...	*Ad valorem*	
	Cotton, Raw, not the produce of Continental Asia or Ceylon	...	,,	

IMPORT TARIFF,—*continued.*

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
	COTTON AND ARTICLES MADE OF COTTON—*contd.*		Rs. A.	
	Cotton-rope	Cwt.	25 0	5 per cent.
	Country-canvas	,,	50 0	
	Piece-Goods—			
	Grey—			
	Jaconets, exceeding 10 × 10 to the quarter-inch	℔.	0 12	
	Jaconets, other sorts ...	,,	0 10½	
	Mulls	,,	1 1	
	Printers	,,	0 10½	
	Shirtings and Longcloths	,,	0 9	
	T cloths 18 reed and upwards and Madapollams	,,	0 9½	
	T cloths under 18 reed, jeans, domestics, sheetings and drills ...	,,	0 8	
	Other sorts ...	...	*Ad valorem.*	
	Sewing thread—			
	Goa and country ...	Cwt.	30 0	
	On reels or cards containing 100 yards each, and *pro rata* above and below*	Gross.	3 0	
	White and coloured ...	℔.	1 0	
	Twist—			
	Mule—No. 15 and lower Nos. ...	℔.	0 5	3½ per cent.
	Nos. 16 to 24 ...	,,	0 7	
	,, 25 to 32 ...	,,	0 8	
	,, 33 to 42 ...	,,	0 9½	
	,, 43 to 52 ...	,,	0 11	
	,, 53 to 60 ...	,,	0 12½	
	,, 61 to 70 ...	,,	0 14	
	,, 71 to 80 ...	,,	0 15	
	And so on, one anna to be added to the valuation per ℔. for every count of ten, or part of a count of ten, above 80.			
	Water—No. 20 and lower Nos. ...	,,	0 8	
	Nos. 21 to 30 ...	,,	0 9½	
	,, 31 to 40 ...	,,	0 11½	
	,, 41 to 50 ...	,,	0 13	
	Above 50 ...	,,	1 0	

* Duty to be charged either on the mark or on the actual length.

IMPORT TARIFF,—*continued.*

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
	COTTON AND ARTICLES MADE OF COTTON—*contd.*		Rs. A.	
	Twist, Orange, Red, and other colours except Turkey Red*	℔.	0 13	3½ per cent.
	Twist, Turkey Red, all kinds*	,,	1 6	
	Cotton goods, all other sorts	...	*Ad valorem.*	5 per cent.
17	DRUGS AND MEDICINES, EXCEPT OPIUM—			
	Aloes, black	Cwt.	11 0	
	,, Socotra ...	,,	25 0	
	Assafœtida (híng) ...	,,	55 0	
	,, coarse (híngrá)	,,	10 0	
	Camphor, Bhemsaini (baras)	℔.	80 0	
	,, refined, cake ...	Cwt.	65 0	
	,, crude, in powder	,,	40 0	
	Cassia lignea	,,	38 0	
	Salep	,,	80 0	
	Senna leaves	,,	5 0	
	All other sorts, except quinine which is free ...	...	*Ad valorem*	
18	DYEING AND COLOURING MATERIALS—			
	Aniline Dyes—Magenta and Roseine	oz.	0 4	
	Cochineal	℔.	1 4	
	Gallnuts, country, Myrabolam	Cwt.	4 0	
	,, Persian ...	,,	25 0	
	Madder or manjíth ...	,,	12 0	
	Orchilla weed	,,	5 0	
	Sapan wood and root ...	,,	5 0	
	All other sorts	...	*Ad valorem*	
19	EARTHEN-WARE (EXCEPT EARTHEN-WARE PIPING), CHINA, CHINA CLAY AND PORCELAIN...	...	*Ad valorem*	
20	FIRE-WORKS—			
	China	Box of 133⅓ lbs.	30 0	
	All other sorts	...	*Ad valorem*	
21	FLAX AND ARTICLES MADE OF FLAX—			
	Canvas, European sail, not exceeding 40 yards ..	Bolt	15 0	
	Piece-goods	...	*Ad valorem*	
	All other sorts, including linen-thread	...	,,	

* Duty to be charged on the grey weight of the coloured yarn : when this is not ascertainable, the actual wharf-weight, or invoice-weight, to be taken.

IMPORT TARIFF,—*continued.*

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
			Rs. A.	
22	FRUITS AND VEGETABLES—			
	Almonds without shell ...	Cwt.	30 0	
	„ in the shell ...	„	11 0	
	Cajoo-kernels	„	10 0	
	Cocoanuts	Thousand	30 0	
	„ kernel-(khopra) ...	Cwt.	8 8	
	Currants, European ...	„	35 0	
	„ Persian ...	„	12 0	
	Dates, dry, in bags ...	„	4 8	
	„ wet, in bags ...	„	3 8	
	„ „ in pots ...	„	7 0	
	Figs, European	„	42 0	
	„ Persian, dried ...	„	6 8	
	Garlic	„	5 0	
	Pistachio-nuts	„	20 0	
	Prunes, Bussorah	„	16 0	
	Raisins, black, Persian Gulf, Red Sea, and Kishmish ...	„	16 0	
	„ Munakka, Persian Gulf and Red Sea	„	7 0	
	„ Malaga and bloom ...	lb	0 10	
	„ other sorts ...	... ...	*Ad valorem*	
	Walnuts	Cwt.	5 8	
	All other sorts, except Bedmushk, Bajarbattu-nuts, and fresh fruits and vegetables not separately enumerated, which are free ...	... ...	*Ad valorem*	5 per cent.
23	GLASS, GLASS-WARE, BEADS, FALSE PEARLS AND FALSE CORALS—			
	Bangles, Glass, China, gilt ...	100 pairs	6 0	
	„ „ „ not gilt	„	3 0	
	Beads, China	Cwt.	30 0	
	Coral, false	... ...	*Ad valorem*	
	Glass, China, of all colours ...	133⅓ lbs.	32 0	
	„ Crown, coloured ...	100 supl. feet	25 0	
	„ „ of sizes ...	„	7 0	
	Pearls, false—			
	Bájria	Lákh	5 0	
	Boria	Thousand	1 4	
	Jouria	Lákh	8 0	
	Nathia	Thousand	0 6	
	Tachea	„	1 0	
	Wattanah	Lákh	10 0	
	All other sorts of beads, false pearls and glass, except bottles used to bottle beer, wine, spirit, or aerated waters, which are free ...	... ...	*Ad valorem*	

IMPORT TARIFF—*continued.*

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
			Rs. A.	
24	GUMS, GUM RESINS, AND ARTICLES MADE OF GUM OR GUM RESIN—			5 per cent
	Copal	Cwt.	65 0	
	Cutch and Gambier ..	,,	10 0	
	Gum Ammoniac ..	,,	12 0	
	,, Arabic	,,	15 0	
	,, Bdellium (common gum)	,,	5 0	
	,, Benjamin ...	,,	40 0	
	,, Bysabol (coarse myrrh) ...	,,	12 0	
	,, Olibanum or frankincense	,,	12 0	
	Kino	,,	10 0	
	Myrrh	,,	30 0	
	,, Persian (false) ...	,,	3 0	
	Rosin	,,	5 0	
	All other sorts ...	... ...	*Ad valorem*	
25	HARDWARE AND CUTLERY, INCLUDING IRONMONGERY AND PLATED-WARE, BUT EXCLUDING MACHINERY AND THE COMPONENT PARTS THEREOF, WHICH ARE FREE, AND AGRICULTURAL IMPLEMENTS, WHICH ALSO ARE FREE	... ...	*Ad valorem*	
26	HEMP AND ARTICLES MADE OF HEMP—			
	Piece-goods	... ...	*Ad valorem*	
	All other sorts, except rope	...	,,	
27	HIDES AND SKINS, EXCEPT RAW OR SALTED HIDES OR SKINS, WHICH ARE FREE—			
	Hides—			
	Border	Each	30 0	
	Buffalo	Score	80 0	
	Cow	,,	60 0	
	Skins—			
	Calf	Doz.	45 0	
	Chamois	,,	6 0	
	Goat	Score	16 0	
	Lamb	,,	6 0	
	Roan	Doz.	30 0	
	Sheep	Score	11 0	
	All other sorts	... ...	*Ad valorem*	

IMPORT TARIFF—*continued.*

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
			Rs. A.	
28	INSTRUMENTS AND APPARATUS—			
	Musical	...	*Ad valorem*	
	Drawing, Measuring, Optical, Photographic (including materials for Photography), Surveying, and Surgical (including surgical appliances)	...	"	
29	IVORY AND IVORY-WARE—			
	Unmanufactured—			
	Elephants' grinders ...	Cwt.	125 0	
	Elephants' tusks, each exceeding 20 lbs. in weight	"	450 0	
	Elephants' tusks not less than 10 lbs. and not exceeding 20 lbs. each ...	"	325 0	
	Elephants' tusks each less than 10 lbs. ...	"	175 0	
	Sea-cow or moye teeth, each not less than 3 lbs. ...	"	175 0	5 per cent.
	Sea-cow or moye teeth, each less than 3 lbs. ...	"	60 0	
	Articles made of ivory ...	...	*Ad valorem*	
30	JEWELLERY, INCLUDING PLATE—			
	Silver-ware, plain } Other than European	Tolah	1 2	
	" embossed or chased } Other than European	"	1 8	
	All other sorts, except precious stones and pearls, which are free	...	*Ad valorem*	
31	LEATHER AND ARTICLES MADE OF LEATHER, INCLUDING BOOTS, SHOES, HARNESS AND SADDLERY, BUT EXCLUDING BELTING FOR DRIVING MACHINERY, WHICH IS FREE	...	*Ad valorem*	
32	LIQUORS—			
	Ale, beer and porter ...	Impl. Gallon or six quart bottles ...	...	One anna.
	Cider, and other fermented liquors			
	Liqueurs	"	...	Rs. 4.
	Spirit, for use exclusively in arts or manufactures or in chemistry, which has been rendered effectually and permanently unfit for human consumption ...	...	*Ad valorem*	10 per cent.

IMPORT TARIFF—*continued.*

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
	LIQUORS—*contd.*		Rs. A.	
	Spirit, other sorts ...	Impl. Gallon or six quart bottles of the strength of London proof	...	Rs. 4, and the duty to be increased in proportion as the strength of the spirit exceeds London proof.
	Wines—			
	Champagne and all other sparkling wines ...	Impl. Gallon or six quart bottles ...	...	Rs. 2-8.
	Claret, and still Burgundy	"	...	Re. 1.
	All other sorts of still wines	"	...	Re. 1-8.
33	MATCHES, LUCIFER, AND ALL OTHER SORTS	...	*Ad valorem*	5 per cent.
34	MATS—			
	Floor-matting, China and Singapore, of all sorts ...	Hundred	70 0	
	All other sorts except coir-matting	...	*Ad valorem*	
35	METALS, UNWROUGHT, WROUGHT, AND ARTICLES MADE OF METALS—			
	Brass—			
	Beads, Ghúngrí, China ...	Thousand	0 14	
	Old	Cwt.	35 0	
	Sheets, rolls, very thin ...	"	90 0	
	Wire	lb.	0 8	
	All other sorts ...	...	*Ad valorem*	
	Copper—			
	Australian cake ...	Cwt.	50 0	
	Bolt	"	50 0	
	Brazier's	"	52 0	
	China cash	"	30 0	
	Japan	"	48 0	
	Nails and composition-nails	"	48 0	
	Old	"	48 0	
	Pigs and slabs, foreign ...	"	46 0	
	Sheet, sheathing, and plate	"	52 0	
	Tiles, ingots, cakes, and bricks	"	48 0	
	Other sorts, unmanufactured	...	*Ad valorem*	
	China, white copper-ware ...	lb.	1 2	
	Foil or dakpana ...	100 leaves	3 0	
	Wire	lb.	0 10	
	All other sorts ...	...	*Ad valorem*	
	Gold Leaf, European ...	100 leaves	3 0	
	" Mock ...	20 books	5 0	

IMPORT TARIFF—*continued.*

No.	Names of Articles.	Per	Tariff Valuation.	Rate of Duty.
			Rs. A.	
	METALS, &c.,—*contd.*			
	Iron—			
	Anchors and cables ...	...	*Ad valorem*	1 per cent.
	Angle and T iron ...	...	"	
	Beams, pillars, girders, bridge-work, and other descriptions of iron, imported exclusively for building purposes ...	...	"	
	Flat, square and bolt, including Scotch ...	Ton	100 0	
	Galvanised	Cwt.	11 0	
	" Sheets and ridging	"	11 0	
	Hoop, plate and sheet ...	Ton	135 0	
	Nails, rose, clasp, and flat-headed, rivets and washers	Cwt.	12 8	
	Nails, other sorts, including galvanised	...	*Ad valorem*	
	Nail-rod	Ton	120 0	
	Old	Cwt.	2 0	
	Pig	Ton	55 0	
	Pipes and tubes ...	...	*Ad valorem*	
	Rice bowls	Set of ten	4 0	
	"	" six	2 0	
	Rod, round, British, not exceeding half-inch diameter ...	Ton	130 0	
	" exceeding half-inch diameter ...	"	100 0	
	Swedish, flat and square ...	"	160 0	
	Tinned plates ...	Cwt.	15 0	
	All other sorts, including wire, but excluding railway-materials, and kentledge, which last-named article is free ...	...	*Ad valorem*	5 per cent.
	Lametta, double reels ...	Score	4 8	
	" single " ...	"	2 4	
	Lead—			
	Ore, Galena	Cwt.	13 0	
	Pig	"	11 0	
	Pipes	...	*Ad valorem*	
	Sheets, tea	Cwt.	20 0	
	" other sorts ...	"	12 0	
	Orsidue and brass-leaves, foreign, European ...	lb.	1 2	

IMPORT TARIFF—*continued.*

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
			Rs. A.	
	METALS, &c.,—*contd.*			
	Orsidue and brass-leaves, China	℔.	0 14	
	Patent or Yellow Metals, sheathing, sheets, and bolts	Cwt.	42 0	
	Ditto ditto old ...	,,	37 0	
	Quicksilver	℔.	2 8	
	Shot, bird	Cwt.	16 0	
	Steel, excluding railway-materials—			
	Blistered	,,	9 0	
	British and foreign other than Swedish ...	,,	9 0	
	Cast	,,	25 0	
	Spring	,,	10 0	
	Swedish	,,	10 0	
	Tin, Block	,,	50 0	
	,, other sorts	...	*Ad valorem*	
	Zinc or Spelter—			
	Nails	Cwt.	14 0	
	Plate and other shapes, soft	,,	15 0	
	,, ,, ,, ,, hard	,,	11 0	
	Sheet or zinc sheathing ...	,,	17 0	
	All other sorts	...	*Ad valorem*	5 per cent.
36	MILITARY AND OTHER UNIFORMS AND ACCOUTREMENTS, &c., EXCEPT UNIFORMS AND ACCOUTREMENTS IMPORTED BY A PUBLIC SERVANT FOR HIS PERSONAL USE, WHICH ARE FREE ...	...	*Ad valorem*	
37	NAVAL STORES NOT OTHERWISE DESCRIBED, EXCEPT OAKUM, WHICH IS FREE	...	*Ad valorem*	
38	OILS—			
	Cassia	℔.	3 0	
	Cocoanut	Cwt.	15 0	
	Grass	℔.	1 12	
	Jinjilí or til	Cwt.	15 0	
	Kerosene, paraffine, petroleum, rock and shale oils of all descriptions	Impl. Gallon	0 12	
	Linseed, European ...	,,	2 0	
	Naphtha	Cwt.	30 0	
	Otto of sorts	℥.	10 0	
	Sandalwood	℔.	8 0	
	Turpentine	Impl. Gallon	1 10	

IMPORT TARIFF—*continued.*

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
			Rs. A.	
	OILS—*continued.*			
	Whale (except spermaceti) and fish	Cwt.	15 0	5 per cent.
	Wood	"	15 0	
	All other sorts, except cocum and slush fat, which are free	...	*Ad valorem*	
39	OIL AND FLOOR CLOTH ...	...	*Ad valorem*	
40	OPIUM NOT COVERED BY A GOVERNMENT PASS	Seer of 80 tolahs	...	Rs. 24.
41	PAINTS, COLOURS, PAINTERS' MATERIALS, AND COMPOSITIONS FOR APPLICATION TO LEATHER AND METALS—			
	Ochre other than European, all colours	Cwt.	1 8	5 per cent.
	Paints of sorts	"	12 0	
	" Composition ...	"	25 0	
	" Patent driers ..	"	14 0	
	Prussian blue, China ...	lb.	0 8	
	" " European ...	"	1 8	
	Red lead	Cwt.	14 0	
	Turpentine	Impl. Gallon	1 10	
	Verdigris	Cwt.	75 0	
	Vermilion, Canton ...	Box of 90 bundles.	150 0	
	White lead	Cwt.	12 0	
	All other sorts	...	*Ad valorem*	
42	PAPER—			
	Wall-paper	...	*Ad valorem*	
43	PERFUMERY—			
	Atary, Persian	Cwt.	15 0	
	Perfumed spirit in wood, or in bottles containing more than half a pint ...	Impl. Gallon	...	Rs. 4,
	Rose-flowers, dried ...	Cwt.	13 0	5 per cent.
	Rose-water	Impl. Gallon	1 12	
	All other sorts, including perfumed spirit in bottles containing not more than half a pint	...	*Ad valorem*	
44	PIECE-GOODS, NOT OTHERWISE DESCRIBED	...	*Ad valorem*	

IMPORT TARIFF—*continued.*

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
			Rs. A.	
45	PIPES AND OTHER IMPLEMENTS USED IN THE CONSUMPTION OF TOBACCO	...	*Ad valorem*	5 per cent.
46	PITCH, TAR AND DAMMER—			
	Bitumen	...	*Ad valorem*	
	Dammer	Cwt.	5 0	
	Pitch, American and European	,,	6 0	
	,, Coal	,,	2 8	
	Tar, American and European	,,	6 0	
	,, Coal	,,	2 8	
	,, Mineral	...	*Ad valorem*	
47	PROVISIONS AND OILMAN'S STORES—			
	Bacon in canisters, jowls and cheeks	lb.	0 9	
	Beef and pork	Tierce of three cwt.	60 0	
		Barrel of two cwt.	40 0	
	Cheese	lb.	0 10	
	China preserves ...	Box of six jars.	8 0	
	Flour	Barrel or sack of 200 lbs.	15 0	
	Ghee	Cwt.	36 0	
	Groceries not otherwise described	...	*Ad valorem*	
	Pork-hams	lb.	0 10	
	Salted fish*	Cwt.	...	12 annas.*
	Tongues, salted	Keg of six	10 0	5 per cent.
	Vinegar, European, in wood	Impl. Gallon	1 8	
	,, Persian ...	,,	0 12	
	,, Country ...	,,	0 6	
	All other sorts, except bêche-de-mer, fish-maws, shark-fins, singally and sozille, which are free ...	...	*Ad valorem*	
48	RAILWAY MATERIALS—			
	Of iron	...	*Ad valorem*	1 per cent.
	Steel rails and other articles made of steel intended for the permanent-way of railways	...	,,	

* Duty to be levied only on salted fish imported into the Bombay Presidency except Sindh, and into such other parts of British India as the Governor General in Council may, by Notification in the *Gazette of India*, from time to time direct.

IMPORT TARIFF—*continued.*

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
			Rs. A.	
	RAILWAY MATERIALS—*contd.*			
	All other sorts, including carriages and trucks ...	...	*Ad valorem*	5 per cent.
49	SALT—			
	Imported into British Burma	Indian maund of 3,200 tolahs.	...	3 annas.
	" into Bengal ...	"	...	Rs. 3-4.
	" into any other part of British India	"	...	" 1-13.
50	SEEDS—			
	Castor	Cwt.	4 8	
	Cummin	"	13 0	
	" black	"	4 8	
	Linseed	"	5 8	
	Methi	"	4 0	
	Mustard, rape, or sarson ...	"	4 8	
	Quince seed or bihi-dana ...	"	30 0	
	Sozírá	"	20 0	
	All other sorts, except seeds imported by any Public Society for gratuitous distribution, which are free ...	...	*Ad valorem*	
51	SHELLS AND COWRIES—			
	Chanks—			
	Large shells, for cameos ...	Hundred	10 0	
	White, live	"	6 0	5 per cent.
	" dead	"	3 0	
	Cowras—			
	From Mozambique and Zanzibar	"	3 0	
	From other places ...	"	0 8	
	Cowries—			
	Bázár, common ...	Cwt.	2 8	
	Maldive	"	10 0	
	Sankhli	"	50 0	
	Yellow, superior quality ...	"	5 0	
	Mother-of-pearl	"	30 0	
	Tortoise-shell	lb.	6 0	
	" nakh	"	1 0	
	All other sorts, including nakhla	...	*Ad valorem*	

IMPORT TARIFF—*continued.*

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
			Rs. A.	
52	SILK AND ARTICLES MADE OF SILK—			
	Floss	℔.	8 0	
	Piece-goods	...	*Ad valorem*	
	Raw Silk—			
	Chaháram and Cochin China	℔.	4 0	
	Mathow	,,	1 12	
	Other kinds of China ...	,,	7 0	
	Panjam and Kachra ...	,,	1 4	
	Persian	,,	5 0	
	Siam	,,	2 8	
	Sewing thread, China ...	,,	8 0	
	All other sorts	...	*Ad valorem*	
53	SOAP	...	*Ad valorem*	
54	SPICES—			
	Aniseed star	Cwt.	35 0	
	Betelnuts—			
	Goa	,,	12 0	
	In the husk	Thousand	2 0	
	White, Srivarddhan ...	Cwt.	18 0	
	All other sorts ...	,,	5 0	
	Chillies, dried ...	,,	8 0	
	Cloves	,,	40 0	
	,, in seeds, Narlavang ...	,,	16 0	
	Mace	℔.	1 2	5 per cent.
	Nutmegs	,,	1 0	
	,, in shell ...	,,	0 8	
	Pepper, black and long ...	Cwt.	25 0	
	,, white	,,	32 0	
	All other sorts	...	*Ad valorem*	
55	STATIONERY (EXCEPT PAPER, WHICH IS FREE) ...	...	*Ad valorem*	
56	SUGAR—			
	China, candy	Cwt.	20 0	
	Loaf	,,	23 0	
	Soft	,,	13 8	
	All other sorts of saccharine produce	...	*Ad valorem*	
57	TEA—			
	Black	℔.	0 12	
	Green	,,	1 4	
58	TOBACCO—			
	Manufactured	...	*Ad valorem*	
	Unmanufactured ...	...	,,	

IMPORT TARIFF—*concluded.*

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
			Rs. A.	
59	TOILET REQUISITES, NOT OTHERWISE DESCRIBED	...	*Ad valorem*	5 per cent.
60	TOYS AND REQUISITES FOR ALL GAMES	...	*Ad valorem*	
61	UMBRELLAS—			
	China paper kettisals ...	Box of 110	30 0	
	Cotton, steel-ribbed ...	Each	0 13	
	„ cane-ribbed ...	„	0 12	
	„ oiled, other than European ..	„	0 10	
	All other sorts ...	...	*Ad valorem*	
62	WOOLLEN GOODS—			
	Braid	...	*Ad valorem*	
	Hosiery	...	„	
	Piece-goods	...	„	
	All other sorts	...	„	

SCHEDULE B.

EXPORT TARIFF.

No.	NAMES OF ARTICLES.	PER	TARIFF VALUATION.	RATE OF DUTY.
			Rs. A.	
1	DYEING AND COLOURING MATERIALS—			
	Indigo—			
	Leaves, green or dry ...	Ton	...	Rs. 3.
	Manufactured	Indian maund of 3,200 tolahs.	...	
2	GRAIN AND PULSE—			
	Rice in the husk (paddy) ...	„	...	3 annas.
	„ not in the husk ...	„	...	
3	LAC—			
	Button	Cwt.	65 0	4 per cent.
	Seed	„	45 0	
	Shell	„	80 0	
	Stick	„	35 0	
	All other sorts, except lac-dye, which is free	...	*Ad valorem*	

ACT No. XVIII OF 1875.

Received the Governor General's assent on the 13*th October* 1875.

An Act for the improvement of Law Reports.

WHEREAS it is expedient to diminish the multitude and expense of the Law Reports published in British India, and to improve their quality: And whereas, with a view to furthering these objects, the Governor General in Council proposes to authorize the publication of reports of cases decided by the High Courts of Judicature established under the twenty-fourth and twenty-fifth of Victoria, chapter 104; It is hereby enacted as follows:— Preamble.

1. This Act may be called "The Indian Law Reports Act, 1875:" Short title.

It extends to the whole of British India; Local extent.

And it shall come into force on such day as the Governor General in Council notifies in this behalf in the *Gazette of India*.[a] Commencement.

2. [*Repealed by Act No. XII of* 1876.]

3. No Court shall be bound to hear cited, or shall receive or treat as an authority binding on it, the report of any case decided by any of the said High Courts on or after the said day, other than a report published under the authority of the Governor General in Council. Authority given only to authorized reports.

4. Nothing herein contained shall be construed to give to any judicial decision any further or other authority than it would have had if this Act had not been passed.[b] Authority of judicial decisions.

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[a] 1st Jan. 1876, *Gazette of India*, 27th Nov. 1875, p. 589.

[b] *Rules for the publication of the authorized Indian Law Reports.*

I.—A Staff of Reporters shall be maintained for such Courts of Law as the Government of India from time to time direct, consisting of one Reporter for each Court and as many Assistant Reporters as the business is found to require.

II.—The Law Reports shall be published under the authority of the Government of India in the Legislative Department.

III.—Each Reporter shall have the general supervision and control of his Assistants and shall distribute their work among them.

IV.—Each Reporter is, from the materials collected by himself and his Assistants, to select all the cases he thinks it useful to report, to reduce them into the shape of reports, to prefix a head-note to each report, to have them printed, and to transmit the proof to the Legislative Department.

V.—No case shall be reported if the Judge or Judges who decided it desire that it should not be reported.

VI.—If the Court desires that the Reporter shall consult it or any committee appointed by it on any case or matter, it shall be his duty to do so.

VII.—The Government of India in the Legislative Department will authorize the publication of such cases as are finally determined on.

VIII.—If the Court signifies to the Reporter its desire that any case decided by the Court or any division or Judge thereof shall be reported, such case shall be reported and published.

IX.—Arrangements shall be made for the separate local publication of reports relating to local laws when such local publication may be deemed advisable.

ACT No. XXI of 1875.

Received the Governor General's assent on the 14*th December* 1875.

An Act to authorize the University at Calcutta to grant Honorary Degrees.

Preamble.

WHEREAS, under Act No. II of 1857, an University was established at Calcutta for the purpose of ascertaining by examination the persons who had acquired proficiency in different branches of Literature, Science and Art, and of rewarding them by Academical Degrees as evidence of their respective attainments: and by section eight of the same Act the Chancellor, Vice-Chancellor and Fellows for the time being of the said University were empowered to make bye-laws and regulations touching the examination for such Degrees and the granting of the same;

And whereas, by section eleven of the same Act, it was provided that the said Chancellor, Vice-Chancellor and Fellows should have power after examination to confer the several Degrees therein mentioned;

And whereas, under Act No. XLVII of 1860, the Chancellor, Vice-Chancellor and Fellows for the time being of the said University were empowered to confer such Degrees as they should appoint by bye-laws and regulations made and approved as therein mentioned; and all the provisions of the said Act No. II of 1857 with respect to the Degrees therein mentioned, and the exam-

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X.—In framing reports regard shall be had to the following general rules and principles:—

(*a*).—Every report ought to contain a statement of all facts necessary for a due understanding of the decision.

(*b*).—Reports ought not to state any facts which are clearly unnecessary for a due understanding of the decision.

(*c*).—In judging whether to insert or to omit a statement of facts, it is better to err on the side of overstatement than of understatement.

(*d*).—It is not meant that the Reporter must state the facts over again if there is a clear, full and consecutive statement of them in the judgment.

(*e*).—As a general rule cases for which a full statement of facts cannot be obtained are not to be reported.

(*f*).—As a general rule every report ought to contain a statement of the arguments of Counsel, sufficient to show what points were pressed upon the Court.

(*g*).—The Reporter should note any material bearing which the decision may have on other decisions or on any principle of law, and which is not otherwise apparent on the face of the report.

(*h*).—Every report ought to contain a full copy or account of the judgment delivered by the Court and by each Judge thereof, or of so much of the judgment as bears on the point for which the case is reported.

(*i*).—As a general rule, cases turning upon evidence or inferences of fact, cases relating to the construction of private documents, and. generally, cases which do not illustrate some principle of law or some important bearing of an enactment in a way not covered by previous decisions, ought not to be reported.

(*j*).—In selecting cases for report the Reporters are to be guided by the weight and importance of the decision and the existence of materials for a satisfactory report, and are not to abstain from reporting a case merely because they may think the decision to be erroneous, or to be in conflict with other decisions.

ination for those Degrees were declared to apply to Degrees conferred under the said Act No. XLVII of 1860, and to the examinations for such Degrees;

And whereas, under bye-laws and regulations made in exercise of the said powers, the executive government of the said University is now vested in a Syndicate consisting of the Vice-Chancellor and six of the Fellows of the said University; and it is the duty of the said Syndicate (among other things) to grant Academical Degrees;

And whereas it is expedient to authorize the said Syndicate to grant such Degrees to persons who have not undergone a previous examination; It is hereby enacted as follows:—

Power to confer Honorary Degrees.

1. With the previous consent of the said Chancellor, the said Syndicate for the time being may grant any Academical Degree to any person without requiring him to undergo any examination for such Degree:

Provided that the said Vice-Chancellor and not less than four of the other members of the said Syndicate for the time being certify in writing that in his and their opinion such person is, by reason of eminent position and attainments, a fit and proper person to receive such Degree.

THE INDIAN TELEGRAPH ACT, 1876.

CONTENTS.

PREAMBLE.

I.—Preliminary.

SECTION.

1. Short title.
   Local extent.
   Commencement.
2. Repeal of Acts.
   Saving of existing licenses and rules.
3. Interpretation-clause.

II.—Privileges and Powers of Government.

4. Exclusive privilege of establishing telegraphs.
   Proviso as to licenses.
5. Power to take possession of telegraphs established by license.
6. Power to establish telegraphs on land of Railway Company.
7. Power to frame rules for the conduct of Government telegraphs.
8. Power to frame rules for telegraphs established by license,
   and to declare Act applicable to such telegraphs,
   and to telegraphs established within British India by Foreign Powers.
9. Government not responsible for loss or damage.

III.—Penalties.

SECTION.

10. Penalty for establishing or maintaining unlicensed telegraphs.
11. For using or working such telegraphs.
12. For opposing establishment, &c., of telegraphs on railway land.
13. For intruding into signal-room, &c.
14. For unlawfully learning the contents of messages.
15. For damaging, &c., telegraphs with intent to prevent transmission, to tap, or to commit mischief.
    Such offences to be cognizable and non-bailable.
16. Power to employ additional police in places where mischief to telegraphs is repeatedly committed.
17. Penalty for omitting to transmit or deliver messages.
    For intercepting or divulging messages.
    For divulging purport of signals.
18. For offering bribes to telegraph officers.
19. For misconduct.
20. For sending messages without payment to Government.
21. For sending fabricated message.
22. For retaining messages, &c., delivered by mistake.
23. For abetment of, and attempts to commit, offences.

ACT No. I OF 1876.

Received the Governor General's assent on the 4th January 1876.

An Act to amend the law relating to Telegraphs in India.

Preamble.

WHEREAS it is expedient to amend the law relating to Telegraphs in India; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called "The Indian Telegraph Act, 1876:"

Local extent.

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty;

Commencement.

And it shall come into force at once.

Repeal of Acts.

2. Act No. XXXIV of 1854 (*for regulating the establishment and management of Electric Telegraphs in India*) and Act No. VIII of 1860 (*for regulating the establishment and management of Electric Telegraphs in India*) are hereby repealed:

Saving of existing licenses and rules.

But all licenses granted, declarations made and rules framed under either of the said Acts and now in force, shall be deemed to have been respectively granted, made and framed under this Act.

3. In this Act— Interpretation-clause.

"Telegraph" means an electric or magnetic Telegraph: "Telegraph."

"Telegraph officer" means any person employed either permanently or temporarily in connection with a telegraph established or maintained and worked by the Government, or by a Company or person licensed under this Act; and "Telegraph officer."

"Message" means any communication sent by telegraph, or given to a telegraph officer to be sent by telegraph or to be delivered. "Message."

II.—Privileges and powers of Government.

4. Within British India, the Governor General in Council shall have the exclusive privilege of establishing lines of telegraph: Exclusive privilege of establishing telegraphs.

Provided that the Governor General in Council may grant a license to any person or Company to establish or to maintain a line of telegraph within any part of British India, which license shall be revocable on the breach of any of the conditions therein contained. Proviso as to licenses.

5. On the occurrence of any public emergency, or in the interest of the public safety, the Governor General in Council or the Local Government may take temporary possession of any line of telegraph established or maintained by any Company or person licensed under this Act, or may order that any message to or from any person or relating to any specified subject shall be intercepted or communicated to the Government or any officer thereof mentioned in such order. Power to take possession of telegraphs established by license.

If any doubt arises as to the existence of a public emergency or whether any act done under this section was in the interest of the public safety, a certificate signed by a Secretary to the Government of India or to the Local Government shall be conclusive evidence on the point.

6. Any Railway Company, on being required so to do by the Governor General in Council, shall permit the Government to establish upon the land of such Company, whether within or without the railway fence as the Governor General in Council may in each case determine, a line of telegraph, and shall give every reasonable facility for establishing, maintaining and using the same. Power to establish telegraphs on land of Railway Company.

7. The Governor General in Council may, from time to time, frame rules consistent with this Act for the conduct of telegraphs heretofore or hereafter established by Government, and may therein prescribe the regulations, conditions and restrictions according to which all messages and signals shall be transmitted by such telegraphs. Power to frame rules for the conduct of Government telegraphs.

Power to frame rules for telegraphs established by license,

8. The Governor General in Council may from time to time, by notification in the *Gazette of India*,

(*a*) prescribe rules for the conduct of any telegraph established or maintained by any Company or person licensed under this Act;

ble to such telegraphs and to declare Act applica-

(*b*) declare what portions of this Act shall be applicable to such telegraph and to persons using the same or employed in connexion therewith;

and to telegraphs established within British India by Foreign Powers.

(*c*) declare that this Act, or such portions thereof as may be specified in the notification, shall be applicable to any telegraph established or to be established within British India by any Foreign Prince or State with the consent of the Government of India, and to persons using such telegraph or employed in connexion therewith.

All rules prescribed under this section shall have the force of law.

Government not responsible for loss or damage.

9. The Government of India shall not be responsible for any loss or damage which may occur in consequence of any telegraph officer failing to transmit with accuracy or to deliver any message given to him for transmission or delivery; and no such officer shall be responsible for any such loss or damage, unless he causes the same negligently, maliciously or fraudulently.

III.—Penalties.

Penalty for establishing or maintaining unlicensed telegraphs.

10. Whoever, otherwise than under a license duly granted as aforesaid, establishes, or after revocation of such license maintains, a line of telegraph within British India, shall be liable to a fine not exceeding one thousand rupees, and for every week during which such line shall be maintained, shall be liable to a further fine not exceeding five hundred rupees.

For using or working such telegraphs.

11. Whoever, knowing or having reason to believe that a telegraph has been established or is maintained in contravention of this Act, uses such telegraph for the purpose of sending or receiving messages, or performs any service incidental thereto, shall for every such offence be liable to a fine not exceeding fifty rupees.

For opposing establishment, &c., of telegraphs on railway land.

12. Every Railway Company and every officer of a Railway Company, neglecting or refusing to comply with the provisions of section six, shall be liable to a fine not exceeding one thousand rupees for every day during which such neglect or refusal continues.

For intruding into signal-room, &c.

13. Whoever, without permission of some competent authority, enters the signal-room of a telegraph office of the Government or of a Company or person licensed under this Act,

and whoever enters a fenced enclosure round such a telegraph office in contravention of any rule or notice not to do so,

and whoever refuses to quit such room or enclosure on being requested to do so by any officer or servant employed therein,

and whoever wilfully obstructs or impedes any such officer or servant in the performance of his duty,

shall be liable to a fine not exceeding five hundred rupees.

For unlawfully learning the contents of messages.

14. Whoever does any of the acts mentioned in section thirteen with the intention of unlawfully learning the contents of any message, or for any other unlawful purpose, shall (in addition to the fine to which he is liable under section thirteen) be liable to imprisonment for a term which may extend to a year.

For damaging, &c., telegraphs with intent to prevent transmission, to tap, or to commit mischief.

15. Whoever, intending—

(*a*) to prevent or obstruct the transmission, conveyance or delivery of any message,

(*b*) to intercept or to acquaint himself with the contents of any message, or

(*c*) to commit mischief,

damages, removes, tampers with, or touches, any battery, machinery, wire, cable, post or other thing whatever, being part of or used in or about any telegraph or in the working thereof,

shall be liable to imprisonment for a term which may extend to three years, or to fine, or to both.[a]

Such offences to be cognizable and non-bailable.

All offences under this section shall be cognizable and non-bailable within the meaning of the Code of Criminal Procedure.

Power to employ additional police in places where mischief to telegraphs is repeatedly committed.

16. Whenever it appears to the Director General of Telegraphs that any act causing or likely to cause wrongful damage to any telegraph is repeatedly or maliciously committed in any place, and that the employment of an additional police force in such place is thereby rendered necessary, the Local Government may, on the application of the said Director General, send such additional force to such place, and employ the same therein so long as such necessity continues;

and the inhabitants of such place shall be charged with the cost of such additional police force;

and the Local Government may by order in each case define the limits of any place for the purposes of this section;

and the Magistrate of the District, after enquiry if necessary, shall, subject to the orders of the Local Government, assess the proportion in which

[a] Compare 24 & 25 Vic., c. 97, s. 37.

such cost is to be paid by the said inhabitants according to his judgment of their respective means.

All monies payable under this section shall be recoverable either under the warrant of a Magistrate by distress and sale of the goods of the defaulter within the local limits of such Magistrate's jurisdiction, or by suit in any competent Court, and shall be applied to the maintenance of the police force, or otherwise as the Governor General in Council may from time to time direct.[a]

Penalty for omitting to transmit or deliver messages.

17. Any telegraph officer who—

wilfully secretes, makes away with, alters or omits to transmit, any message which he may have received for transmission or delivery, or

For intercepting or divulging messages.

wilfully, or otherwise than by the official order of a Secretary to the Government of India or to the Local Government, or of such other officer as the Governor General in Council authorizes to give such order, intercepts any message or any part thereof, or divulges any message, or the purport of any message or of any part thereof, to any person not entitled to receive the same, or

For divulging purport of signals.

divulges the purport of any telegraphic signal to any person not entitled to become acquainted with the same,

shall be liable to imprisonment for a term not exceeding three years, or to fine, or to both.

For offering bribes to telegraph officers.

18. Every telegraph officer shall be deemed a public servant within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code. And in the definition of "legal remuneration" contained in the said section 161, the word "Government" shall, for the purposes of this Act, be deemed to include a person or company licensed under this Act.

For misconduct.

19. Any telegraph officer guilty of any act of drunkenness, carelessness, or other misconduct, whereby the transmission or delivery of any message is endangered, or who loiters or makes delay in the transmission or delivery of any message, shall be liable to imprisonment for a term not exceeding three months, or to a fine not exceeding one hundred rupees, or to both.

For sending messages without payment to Government.

20. Any telegraph officer who transmits by telegraph any message upon which the prescribed charge has not been paid, intending thereby to defraud the Government, shall be liable to imprisonment for a term which may extend to three years, or to fine, or to both.

For sending fabricated message.

21. Whoever transmits or causes to be transmitted by a telegraph a message which he knows to be false or fabricated, shall be liable to impri-

[a] Compare Act No. V of 1861, ss. 14 and 15.

sonment for a term which may extend to three years, or to fine, or to both.

22. Whoever fraudulently retains, or wilfully secretes, or makes away with, or keeps, or detains, a message which ought to have been delivered to some other person, For retaining messages, &c., delivered by mistake.

or being required by a telegraph officer to deliver up any such message, neglects or refuses to do so,

shall be liable to imprisonment for a term which may extend to two years, or to fine, or to both.

23. Whoever abets within the meaning of the Indian Penal Code, any offence under this Act, and whoever attempts to commit any such offence, shall be punishable with the punishment herein provided for such offence. For abetment of, and attempts to commit, offences.

BRITISH BURMA LABOUR LAW, 1876.

TABLE OF CONTENTS.

PREAMBLE.

PART I.

PRELIMINARY.

SECTIONS.

1. Short title.
   Local extent.
   Commencement.
2. Repeal of Madras Act No. V of 1866, so far as it affects British Burma.
3. Interpretation-clause.

PART II.

OF EMIGRATION.

Emigration Agents, Medical Inspectors and Depôts.

4. Appointment of Emigration Agent.
   Appointment of Medical Inspector.
5. Emigration Agent and Medical Inspector to be public servants.
6. Duties of Agent.
7. Emigration Agent, &c., to give information to Medical Inspector.
8. Establishment of depôts for emigrants.

SECTIONS.

Recruiters.

9. Licensing of recruiters.
10. Form of license.
Period for which it shall remain in force.
11. Countersignature of Magistrate to recruiter's license.
12. License not to be countersigned until recruiter's fitness is ascertained.

Contracts and Registration and Journey to Depôts.

13. Contract to be entered into with intending emigrant.
14. Medical examination of intending emigrant.
15. Recruiter and emigrant to appear before Magistrate.
16. Examination by Magistrate of emigrants under contract.
17. Examination of dependents on emigrants.
18. Registration of emigrants.
Registration-fee.
19. Journey to depôt.
20. Care of emigrants on journey to depôt.
21. Penalties for infringing provisions as to recruitment.

Procedure on arrival of Emigrants at Depôt.

22. Notice of arrival of emigrants at depôt to be given to Medical Inspector.
23. Medical Inspector to examine emigrants.
24. Inspection of depôts.
25. Treatment of emigrant or dependent suffering from infectious disease.
26. Emigration Agent to pay return expenses of rejected emigrants.
27. Return expenses of dependents.
28. Procedure where dependent is dangerously ill.
29. Countersignature by Medical Inspector where emigrant or dependent is passed by him.
30. Procedure in case of ill-treatment on journey.
31. Ratification of contracts of emigrants passed by Medical Inspector.
32. Registration of contracts.
33. Procedure if emigrant refuses to produce instrument.
34. Procedure if Agent neglects to ratify contract.
35. Consequence of ratification.

Emigrant Vessels and Embarkation of Emigrants.

36. When contract is ratified, emigrant may be forwarded to British Burma.
37. No unlicensed vessel to carry emigrants.
38. Licensee bound to comply with provisions of Act and rules.
39. List of emigrants.
Certificates from Emigration Agent and Medical Inspector.
40. Procedure if emigrant refuses to embark.

SECTIONS.

41. Procedure as to emigrant's instrument.
42. Provision for offices of Emigration Agent and Medical Inspector being held by same person.

PART III.

DEBARKATION AND TRANSIT TO DISTRICTS OF LABOUR.

Officers and Depôts at Ports of Debarkation.

43. Immigration Agent and Medical Inspector of Immigrants.
44. Depôt at port of debarkation.

Procedure on arrival of Vessel carrying Immigrants.

45. Master to report arrival of vessel carrying immigrants.
46. Examination of immigrants by Immigration Agent.
Examination by Medical Inspector.
47. Enquiry into treatment of immigrants on the voyage.

Assignment of Immigrants.

48. Assignment of immigrants to employers.
49. Immigrants not to be separated from dependents.
50. Form of assignment.
51. Entry of assignment in immigrant's instrument.

PART IV.

THE LABOUR DISTRICTS AND RELATIONS OF EMPLOYER AND IMMIGRANT.

Inspectors of Immigrants.

52. Appointment of Inspectors and Assistant Inspectors.
Powers of Inspectors.
53. Return of immigrants to be sent in by employer, &c., to Inspector.
54. Penalty for refusing or omitting to send in return, or sending in incorrect return.
55. Inspector's visits.
56. Power to inspect buildings, &c., and make enquiries as to immigrants.
57. Penalty on person obstructing inspection, &c.

Suspension or Cancellation of Assignment.

58. Inspector may suspend assignment of immigrant temporarily unfitted for labour.
59. Penalty for compelling immigrant to perform work for which he is unfit.
60. Power to discharge immigrants permanently unfitted for labour.

SECTIONS.

Provisions for the Health and Comfort of Immigrants.

61. Sufficient house-accommodation, &c., to be provided.
62. Powers of Inspector as to house-accommodation, &c.
63. Penalty for breach of rules as to house-accommodation.
64. Penalty for breach of rules as to hospital.
65. Penalty on immigrant absenting himself without sufficient cause, or neglecting to labour.
66. Immigrant deserting may be apprehended without warrant.
Proviso.
Further proviso.
67. Immigrant, when made over to police, to be taken before nearest Magistrate.
68. Punishment for desertion.
69. Cancellation of contract by desertion.
70. Provisions regarding desertion and unlawful absence to apply to desertion in transit.
71. Penalty for enticing away, &c., immigrants under contract to another person.
72. Portion of sentence may be cancelled if employer apply for return of immigrant.
73. On expiry of sentence immigrant to be made over to employer.
Conviction not to operate as a release.
74. Time of unlawful absence and of imprisonment to be included in term of immigrant.

Complaints against Employers.

75. If immigrant desires to complain, employer to give notice to Inspector.
76. Procedure on receipt of notice of complaint.
77. Procedure if complaint be untrue or frivolous.
78. Procedure if complaint be well founded.
79. Recovery of wages.
Compensation if wages are due for more than two months.
80. Cancellation of assignment.

Determination of Assignments and Contracts.

81. Immigrant who has completed his assignment may have such completion endorsed.
82. Penalty for forcibly detaining immigrant after completion of assignment, or for omitting to give notice of such completion.
83. Power of unassigned immigrant to redeem contract.
84. Power of assigned immigrant to redeem contract.
Value of unexpired term of assignment.
85. Certificate of release from contract.

PART V.

SUBSIDIARY RULES.

86. Power of Local Government of port of embarkation.
87. Power of Chief Commissioner.

SECTIONS.

88. Publication of rules.
Penalty for breach of rules.

PART VI.

MISCELLANEOUS.

89. Renewal of lost instruments.
90. Copies made under Act to be evidence of contract.
91. Recovery of balances due from employers under terms of assignment.
92. Construction of former contracts.

SCHEDULE A.—RECRUITER'S LICENSE.

SCHEDULE B.—CERTIFICATE OF MEDICAL OFFICER AS TO HEALTH OF INTENDING EMIGRANT.

ACT No. III OF 1876.

Received the Governor General's assent on the 25th January 1876.

An Act to regulate the transport of Native labourers to British Burma, and their employment therein.

WHEREAS it is expedient to regulate the transport of Native labourers to British Burma, and their employment therein under contracts of service; It is hereby enacted as follows:— Preamble.

PART I.

PRELIMINARY.

1. This Act may be called "The British Burma Labour Law, 1876:" Short title.
It extends to the whole of British India; Local extent.
And it shall come into force at once. Commencement.

2. Madras Act No. V of 1866 (*to regulate the manner of engaging and contracting with Native inhabitants within any of the Districts subject to the Government of Fort Saint George, for labour to be performed in any part of India beyond the territorial limits of the Presidency of Madras*) is repealed as to engagements hereafter made in the Presidency of Madras for labour to be performed in British Burma and as to the emigration of Natives of India from such Presidency to British Burma. Repeal of Madras Act No. V of 1866, so far as it affects British Burma.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"Chief Commissioner."

"Chief Commissioner" means the Chief Commissioner of British Burma:

"Emigrants." "Emigration."

"Emigrants" and "emigration" respectively mean emigrants and emigration under this Act:

"Magistrate."

"Magistrate" means a Magistrate of a district, or of a division of a district, or any Magistrate deputed by the Magistrate of the district for the control of emigration or labourers, or any Magistrate of Police for a Presidency Town:

"Immigrant."

"Immigrant" means any emigrant who has gone to British Burma in accordance with a contract made under the provisions of this Act.

PART II.

Of Emigration.

Emigration Agents, Medical Inspectors and Depôts.

Appointment of Emigration Agent.

4. At every port of embarkation the Chief Commissioner shall, with the consent of the Local Government, appoint an Emigration Agent, to whom such remuneration shall be assigned as the Government of India may from time to time direct. Such Agent may be suspended or removed at the pleasure of the Chief Commissioner.

Appointment of Medical Inspector.

At every such port the Local Government shall appoint a competent person to be Medical Inspector of Emigrants, and such remuneration shall be assigned to him as the Governor General in Council may from time to time direct. Such Medical Inspector may be suspended or removed at the pleasure of the Local Government.

Emigration Agent and Medical Inspector to be public servants.

5. Every such Emigration Agent and Medical Inspector shall be a public servant within the meaning of the Indian Penal Code.

Duties of Agent.

6. In addition to the special duties hereinafter assigned to him, every such Emigration Agent shall—

(*a*) protect and aid with his advice all emigrants;

(*b*) cause, so far as he can, all provisions of this Act to be complied with;

(*c*) inspect on arrival all vessels bringing return emigrants to the port at which he is Agent;

(*d*) receive and enquire into the complaints (if any) of the treatment of such emigrants during the voyage and (if necessary) report thereon to the Local Government;

(*e*) aid and advise such returned emigrants when requested by them to do so.

7. Every Emigration Agent, and all persons in charge of, or employed in, any depôt or in any vessel licensed to carry emigrants as hereinafter provided, shall give the Medical Inspector every facility for making such inspections, examinations and surveys as may be necessary or proper under this Act, and shall afford him all such information as may be reasonably required by him.

Emigration Agent, &c., to give information to Medical Inspector.

8. At each port of embarkation the Emigration Agent shall establish a suitable depôt for emigrants.

Establishment of depôts for emigrants.

Recruiters.

9. Each Emigration Agent shall license as many fit persons (whether servants of Government, of individuals or of companies) as he thinks necessary to be recruiters of labourers for British Burma.

Licensing of recruiters.

Every recruiter shall be licensed to obtain labourers from one or more districts to be named in the license.

10. The license granted to a recruiter, under section nine, may be in the form set forth in schedule A hereto annexed.

Form of license.

No license shall be in force for a longer period than one year, and in case of misconduct on the part of the recruiter, the Emigration Agent may cancel his license before the expiration of the period for which it was granted.

Period for which it shall remain in force.

11. A recruiter shall not be deemed to have obtained authority in any place other than a Presidency Town to engage or attempt to engage a Native of India to become an emigrant until his license has been countersigned by the Magistrate of the district or of the division of the district, or to have obtained such authority in any Presidency Town until his license has been countersigned by the Commissioner or Deputy Commissioner of Police.

Countersignature of Magistrate to recruiter's license.

12. No such officer shall countersign a recruiter's license unless and until he has satisfied himself, by such enquiry as he thinks fit, that the licensee is not by character or from any other cause unfitted to be a recruiter under this Act.

License not to be countersigned until recruiter's fitness is ascertained.

If any officer who has countersigned a license afterwards finds reason to think that the licensee is by character or other cause unfitted to be a recruiter under this Act, he may require the licensee to produce the license and may cancel his signature; or he may, if he thinks fit, impound the license and send it to the Emigration Agent for cancellation.

Every such officer refusing to countersign a recruiter's license, or cancelling his signature, shall, without delay, report his refusal or cancellation and the grounds of it to the Emigration Agent to whose authority the recruiter is amenable.

Contracts and Registration and Journey to Depôts.

Contract to be entered into with intending emigrant.

13. Any person desiring to emigrate under this Act may enter into a contract with a recruiter to proceed to British Burma and there serve for a fixed period of not more than three years from the date of his arrival at the port of debarkation.

Every such contract shall be in writing, and shall specify—

(*a*) The recruit's term of service:

(*b*) The number of days and hours which he is to work per week:

(*c*) His monthly wages in money:

(*d*) The persons (if any) intending to accompany him as his dependents:

(*e*) Where the contract is made on behalf of a particular employer, the name of such employer.

The monthly rate of wages shall in no case be less than seven rupees for an able-bodied male labourer.

No recruit shall be required to work more than six days in one week, or more than six consecutive hours, or more than nine hours a day. The obligation to provide on holidays for the care of animals, and the necessities of daily life, shall not be considered as work.

No deduction shall be made from the wages of a recruit on account of the rest for one day in each week.

No emigrant shall be bound by the provisions of this Act unless he has entered into a contract in accordance with this section.

Medical examination of intending emigrant.

14. Every recruit who has entered into such a contract as aforesaid shall be brought by the recruiter before the Civil Surgeon of the district or such other medical officer as the Local Government appoints in that behalf or, in default of such appointment, before such medical officer as the Magistrate directs.

The medical officer shall thereupon examine the recruit, and shall either reject him or shall certify that he is in a fit state of health and able in point of physical condition to proceed to British Burma and to work there.

If it is intended that any persons shall accompany the recruit as his dependents, the recruiter shall also bring them before the medical officer for the purpose of obtaining certificates that they are in a fit state of health and able in point of physical condition to perform the journey to British Burma; and the medical officer shall examine the dependents and shall give or refuse certificates according to his opinion as to their fitness and ability.

Certificates shall be in the form set forth in schedule B hereto annexed, and the recruiter shall pay to the medical officer such fee for each person examined as the Local Government may from time to time prescribe.

15. Every certified recruit and every accompanying dependent shall appear with the recruiter before a Magistrate in the district or Presidency Town within which the contract with the recruit was entered into.

Recruiter and emigrant to appear before Magistrate.

16. The Magistrate shall thereupon inspect the instrument of contract and the medical certificate of the recruit, and shall, apart from the recruiter, examine the recruit with reference to his contract;

Examination by Magistrate of emigrants under contract.

and if it appears that the recruit understands the nature of the contract he has entered into as regards the particulars specified in section thirteen, and that he is willing to fulfil the same, the Magistrate shall register—

(*a*) the name, the father's name, and the age of such recruit:

(*b*) the name of the village or place in which he resides:

(*c*) the port of embarkation to which it is intended that he shall proceed:

(*d*) the several particulars specified in the instrument of contract made under section thirteen.

The recruit shall thereupon be deemed an emigrant under this Act.

If the Magistrate thinks that the recruit does not understand the nature of his contract, or has been induced to enter into it by fraud or misrepresentation, he shall refuse to register him, and record his reasons for such refusal.

17. On the appearance of any person claiming to be dependent on an emigrant, the Magistrate, after inspecting the medical certificate, shall, apart from the recruiter, examine such person if able to give intelligent answers to questions as to his dependence upon the emigrant whom he is about to accompany, and as to his willingness to accompany such emigrant.

Examination of dependents on emigrants.

If the Magistrate is satisfied as to the said dependence and willingness, he shall register the dependent as a dependent on such emigrant.

But if the Magistrate sees reason to doubt such dependence or willingness, he may refuse to register the alleged dependent, and, if so, shall record his reasons for such refusal.

18. The Magistrate shall furnish to every emigrant an authenticated copy on substantial paper of the matters registered under sections sixteen and seventeen.

Registration of emigrants.

Such copy is hereinafter called "the emigrant's instrument" or the "immigrant's instrument."

Another authenticated copy of the matters so registered, together with the original certificate of the medical officer, shall be forthwith forwarded by the Magistrate to the Emigration Agent at the port of embarkation to which the emigrant is about to proceed.

Registration-fee.

For each registration of a recruit under this Act, the recruiter shall pay to the officer making it a fee of eight annas.

Journey to depôt.

19. When the registration under this Act is completed, the emigrant and his dependents may be moved to the depôt at their port of embarkation.

Care of emigrants on journey to depôt.

20. The recruiter himself, or a competent person appointed by him with the approval of the Magistrate by whom such emigrants have been registered, shall accompany and take care of all emigrants and their dependents while journeying to the depôt.

The Magistrate shall give to every person so appointed a certificate under his signature, stating that he has been appointed to accompany and take care of certain emigrants during their journey to the depôt.

Every recruiter by whom any emigrant or dependent is forwarded to a depôt shall, throughout the journey, provide him with proper and sufficient food and lodging.

Penalties for infringing provisions as to recruitment.

21. Whoever, being a duly licensed recruiter, removes for the purpose of emigration any recruit before the completion of such registration as aforesaid;

and whoever by means of intoxication, violence, fraud, false pretences or misrepresentation induces any Native of India to enter into a contract for labour to be performed in British Burma, or to proceed to or towards any sea-port for the purpose of proceeding to British Burma without having entered into any contract;

and whoever wilfully neglects to supply any emigrant or dependent under his care with proper and sufficient food and lodging, or otherwise ill-treats such emigrant or dependent on his journey to the depôt;

and whoever forwards, sends or conveys any such emigrant or dependent with intent to contravene the provisions of this Act;

shall be punished with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Procedure on arrival of Emigrants at Depôt.

Notice of arrival of emigrants at depôt to be given to Medical Inspector.

22. The Emigration Agent shall, within twenty-four hours after the arrival at the depôt of any emigrant, give to the Medical Inspector notice in writing of such arrival.

Medical Inspector to examine emigrants.

23. The copy of the matters so registered and the medical certificate of every emigrant forwarded to the Emigration Agent as provided by section eighteen, shall be shown to the Medical Inspector at the port of embarkation,

and all emigrants and their dependents shall be examined by the Medical Inspector immediately after he receives notice of their arrival at the depôt.

Inspection of depôts.

24. The Medical Inspector of Emigrants shall also, at least once in every week, inspect the emigrants in the depôt, and examine into the state of the depôt and the manner in which the emigrants are therein lodged, fed, clothed and otherwise provided for and attended to.

Treatment of emigrant or dependent suffering from infectious disease.

25. It shall be the special duty of the Medical Inspector to take care that no emigrant or dependent is suffering from any disease calculated to be dangerous to his neighbours, and to isolate or to exclude from the depôt and from embarkation persons who are so suffering.

Any person so suffering may, if the Medical Inspector thinks fit, be removed to a proper hospital for treatment.

Emigration Agent to pay return expenses of rejected emigrants.

26. If the Medical Inspector has reason to think that any emigrant is in such a state of health that his journey to British Burma, or detention in the depôt, would be dangerous to himself or others, or that he is unfit for labour in British Burma, he shall so certify to the Emigration Agent; and in case any emigrant is in such a state of health as aforesaid, the Emigration Agent shall pay to such emigrant such sum as is necessary to enable him to return to the place at which he was registered:

And any emigrant who, from his state of health, is, in the opinion of the Medical Inspector, unfit to undertake such journey, shall be entitled to be fed, lodged and attended to at the port of embarkation at the expense of the Emigration Agent, until he is reported by the Medical Inspector fit to undertake such journey.

Return expenses of dependents.

27. If a dependent has accompanied such emigrant, the Emigration Agent shall pay such sum as is necessary to enable him to return to the place at which he was registered, as well as to feed and lodge him during the detention (if any) of the emigrant in the depôt.

Procedure where dependent is dangerously ill.

28. If the Medical Inspector sees reason to think that any dependent is in such a state of health that his journey to British Burma, or his detention in the depôt, would be dangerous to himself or others, he shall so certify to the Emigration Agent; and thereupon the emigrant to whom such dependent is attached shall be entitled, if he so wishes, to return as if he himself had been certified to be unfit to proceed under section twenty-six.

If the emigrant still desires to proceed, then the dependent shall be kept and be returned to the place at which he was registered as if he were an emigrant falling under section twenty-six.

Countersignature by

29. If the Medical Inspector sees no reason to certify in the manner provided in section twenty-six or section twenty-eight of any emigrant or depen-

Medical Inspector where emigrant or dependent is passed by him.

dent, he shall countersign the copy of the emigrant's instrument which is in the possession of the Emigration Agent.

Procedure in case of ill-treatment on journey.

30. If, upon the arrival of any emigrant or dependent at the depôt, it appear that he has suffered any ill-treatment, or that the recruiter has failed to provide him with proper and sufficient food and lodging during the journey to the depôt, the Local Government or such officer as it may from time to time appoint in this behalf may order the Emigration Agent to pay him a reasonable sum by way of compensation.

Ratification of contracts of emigrants passed by Medical Inspector.

31. When the copy of an emigrant's instrument has been countersigned by the Medical Inspector under section twenty-nine, the Emigration Agent shall ratify the contract into which the emigrant has entered, by countersigning the emigrant's instrument and the authenticated copy thereof forwarded to the Emigration Agent under section eighteen.

Registration of contracts.

32. A copy of every such instrument shall be entered in a register to be kept by the Emigration Agent for the purpose, and a copy of such entry authenticated by himself shall be forwarded by him to the Immigration Agent at the port of debarkation.

Procedure if emigrant refuses to produce instrument.

33. Any emigrant who, without reasonable cause, refuses to produce his instrument when required by the Emigration Agent, or in any respect to comply with the terms of his contract, shall be punished with a fine equal in amount to the cost incurred in engaging, registering and conveying him to the depôt, and in default of payment of such fine with imprisonment which may extend to two months, and such emigrant may forthwith be discharged from the depôt.

A certificate signed by the Emigration Agent that reasonable cause for refusing to produce the emigrant's instrument has not been shown, shall be admissible as *primâ facie* evidence in any proceeding taken under this section.

A certificate signed by the Emigration Agent, stating the cost incurred in engaging, registering and conveying the emigrant to the depôt, shall be conclusive evidence of the amount of such cost.

Every fine levied under the provisions of this section shall be paid to the Emigration Agent.

Procedure if Agent neglects to ratify contract.

34. If within thirty days after the arrival at a depôt of any emigrant, the Emigration Agent does not offer to ratify such contract in manner aforesaid,

or if the Emigration Agent, without the consent of the Local Government, refuses to be bound by the contract made with the emigrant,

the Local Government, or such officer as it may from time to time appoint in this behalf, may order the Emigration Agent to pay to such emigrant such sum of money as is necessary to enable him, together with the dependents (if any) upon him, to return to the place where he was registered, and also to pay him a reasonable sum by way of compensation, and in such case the emigrant shall be released from his contract.

Consequence of ratification.

35. Whan the contract, not being a contract to serve a particular employer, has been ratified by the Emigration Agent, the emigrant shall be deemed to have contracted with the Secretary of State for India in Council to proceed to British Burma, and there to labour according to the terms of his contract in any place and mode which, consistently with such terms and with the provisions of this Act, the Chief Commissioner or any officer appointed by him in that behalf may from time to time direct.

When the contract, being a contract to serve a particular employer, has been ratified by the Emigration Agent, the emigrant shall be deemed to have contracted with the Secretary of State for India in Council to proceed to British Burma and there to labour for such employer; and such employer shall be bound to repay to the Immigration Agent all expenses incurred under this Act in respect of the immigrant and his dependents up to the time when the immigrant is delivered to his employer.

Emigrant Vessels and Embarkation of Emigrants.

When contract is ratified, emigrant may be forwarded to British Burma.

36. When the contract of any emigrant has been duly ratified as aforesaid, he may be forwarded to British Burma, together with his registered dependents (if any).

No unlicensed vessel to carry emigrants.

37. It shall not be lawful to receive any emigrant on board any vessel unless a license to carry emigrants in such vessel has been obtained from the Local Government of the port of embarkation.

The granting or withholding of any such license shall be in the discretion of the Local Government.

Licensee bound to comply with provisions of Act and rules.

38. Every person obtaining a license under the last preceding section shall be bound to comply with the provisions of this Act and the rules made hereunder, so far as such provisions and rules relate to him.

And any such person failing to comply with any of such provisions or rules shall be liable to a fine not exceeding one thousand rupees.

List of emigrants.

39. Before leaving the port of embarkation, the Emigration Agent shall furnish the master of any vessel licensed to carry emigrants with a list specify-

ing as accurately as may be the names, ages and occupations, and the names of the fathers of the emigrants on board, and the names of their dependents (if any) ;

Certificates from Emigration Agent and Medical Inspector.

and the master shall obtain from the Emigration Agent and the Medical Inspector of Emigrants certificates under their respective hands, to the effect that they have in respect of the emigrants and dependents proceeding in such vessel done all that is hereinbefore required to be done on the part of such Emigration Agent and Medical Inspector respectively, and that, to the best of their knowledge, all the directions herein contained for ensuring the health, comfort and safety of the emigrants and dependents have been duly complied with, as well as all rules for the time being in force under section eighty-six.

Procedure if emigrant refuses to embark.

40. If any emigrant without sufficient cause refuses or neglects to embark when called upon by the Emigration Agent so to do, it shall not be lawful to compel such emigrant or his dependents (if any) to embark, or to put him or them on boardship against his will, or to detain him or them against his or their will at the depôt or elsewhere ; but nothing in this section shall diminish or affect the civil or criminal liabilities which such emigrant incurs by reason or in respect of his refusal or neglect aforesaid.

Explanation.—The arbitrary refusal of any such dependent to embark shall not be deemed 'sufficient cause' within the meaning of this section.

Every case in which an emigrant is charged under this section before a Magistrate of Police in a Presidency town shall be heard and determined in a summary manner ; and every such emigrant shall on conviction, whether by such Police Magistrate or any other Magistrate, be punished in the manner provided in section 492 of the Indian Penal Code for the punishment of offences under that section.

Procedure as to emigrant's instrument.

41. The Emigration Agent shall, before the embarkation of any emigrant, ascertain that he has in his possession the instrument mentioned in section eighteen.

If it appear to the satisfaction of the Emigration Agent that any emigrant has lost such copy, the Agent may furnish him with another copy of such instrument to be made from the copy forwarded by the Magistrate under section eighteen, and shall thereupon allow such emigrant to embark.

Provision for offices of Emigration Agent and Medical Inspector being held by same person.

42. The offices of Emigration Agent and of Medical Inspector of Emigrants may be held by the same person; but in such case he shall perform only such of the duties hereinbefore prescribed for the two offices as are necessary for carrying out in substance the provisions of this Part.

PART III.

Debarkation and Transit to Districts of Labour.

Officers and Depôts at Ports of Debarkation.

43. The Chief Commissioner shall, at each port of debarkation, appoint an Immigration Agent and a Medical Inspector of Immigrants, and shall, by notification in the *British Burma Gazette,* define the local limits within which every such Agent and Inspector shall exercise the powers conferred upon him by this Act. Such Agent and Inspector may be suspended or removed at the pleasure of the Chief Commissioner.

Immigration Agent and Medical Inspector of Immigrants.

44. At every such port the Immigration Agent shall establish a suitable depôt for immigrants under this Act, and provide them and their dependents (if any) with proper and sufficient lodging, food, clothing and medical attendance in such depôt until they are despatched to the place of labour.

Depôt at port of debarkation.

Such depôt shall be at all times open to the inspection of the Medical Inspector of Immigrants.

Procedure on arrival of Vessel carrying Immigrants.

45. Upon the arrival at any port of debarkation of any vessel carrying immigrants, the Master of such vessel shall at once report his arrival to the Immigration Agent, and no immigrant on board shall be allowed to land without the permission of such Agent first obtained.

Master to report arrival of vessel carrying immigrants.

Any Master of a vessel who allows any immigrant to land without such permission may be punished by a fine which may extend to fifty rupees for each person so landed.

46. Upon receipt of the report of arrival of any vessel carrying immigrants, the Immigration Agent or such other officer as he deputes in this behalf, shall forthwith go on board such vessel and satisfy himself that the vessel has on board its proper list of immigrants, and shall compare the immigrants on board with the list.

Examination of immigrant by Immigration Agent.

The Medical Inspector shall also, as soon as may be, examine the immigrants, in order to ascertain whether any of them are suffering from contagious or infectious disease.

Examination by Medical Inspector.

Any immigrant suffering under any such disease may, if the Medical Inspector thinks fit, be removed to a proper hospital for treatment.

47. The Immigration Agent may, if he thinks fit, and shall on complaint made by any of the immigrants, inquire into the treatment of the immigrants during the voyage, and submit a report thereon to the Chief Commissioner.

Enquiry into treatment of immigrants on the voyage

Assignment of Immigrants.

Assignment of immigrants to employers.

48. The Chief Commissioner may from time to time make rules consistent with this Act regulating—

(*a*) applications to the Immigration Agent by persons desiring to employ immigrants,

(*b*) the terms on which the Agent shall assign immigrants to such persons respectively,

(*c*) the terms on which immigrants shall be allowed to labour on their own account,

(*d*) the mode in and terms on which immigrants contracting to serve a particular employer shall be sent to their place of labour.

All such rules shall be published in the *British Burma Gazette.*

Immigrants not to be separated from dependents.

49. In assigning immigrants to particular employers, the Immigration Agent shall take care that they are not separated from their dependents.

Form of assignment.

50. The assignment may be made in such form as the Chief Commissioner shall by rule direct, and the Immigration Agent shall send each employer a copy authenticated by himself of the entry forwarded to him by the Emigration Agent under section thirty-two.

Such copy is hereinafter called "the employer's instrument."

Entry of assignment in immigrant's instrument.

51. The Immigration Agent shall endorse on the instrument of every immigrant assigned under section fifty an entry showing—

(*a*) the name and residence of his employer, and

(*b*) the period for which the immigrant is so assigned.

PART IV.

THE LABOUR DISTRICTS AND RELATIONS OF EMPLOYER AND IMMIGRANT.

Inspectors of Immigrants.

Appointment of Inspectors and Assistant Inspectors.

52. The Chief Commissioner may appoint so many Inspectors and Assistant Inspectors of Immigrants as he thinks proper, and may from time to time define, by notification in the *British Burma Gazette,* the local limits within which each such Inspector and Assistant Inspector shall exercise and perform the powers and duties conferred and imposed on him by this Act.

Powers of Inspectors.

The Chief Commissioner may confer all or any of the powers of a Magistrate on such Inspectors and Assistant Inspectors; and they shall be public servants within the meaning of the Indian Penal Code.

Return of immigrants to be sent in by

53. Every employer of immigrants under this Act shall, on such days and in such mode as may from time to time be prescribed by rule, under

section eighty-seven, make out in writing, and deliver to the Inspector of Immigrants, a return of the number of immigrants so employed by him and their dependents (if any), and a return of the sickness and mortality among them during the preceding six months.

employer, &c., to Inspector.

54. Any employer refusing, or wilfully omitting, to send in any such return as mentioned in the last preceding section, or knowingly sending in an incorrect return, shall, on conviction before a Magistrate, be liable to a fine not exceeding five hundred rupees;

Penalty for refusing or omitting to send in return, or sending in incorrect return.

and a certificate under the hand of the Inspector to whom such return ought to have been sent, stating that such return has not been received, or is incorrect as aforesaid, shall be received as *primâ facie* evidence of the truth of such statement.

55. Every Inspector of Immigrants shall, so often as may be directed by the Chief Commissioner, visit all lands and houses within the limits of his authority on or in which any immigrant is employed, and inspect every building or place in any way used by or for any such immigrants, or in or on which any such immigrants are employed and investigate the condition of such immigrants; and for such purpose the Inspector may require that any immigrant shall be produced before him with all papers relating to his contract under this Act, and may make such enquiries as may to him seem proper.

Inspector's visits.

56. Any Magistrate exercising jurisdiction in the district, and any person authorized by him in writing in this behalf, may at any time—

Power to inspect buildings, &c., and make enquiries as to immigrants.

(a) enter and inspect any building or place wholly or partially used by or for immigrants,

(*b*) require that any immigrant or dependent be brought before him, and

(*c*) make any enquiries which he thinks proper touching the condition or treatment of any immigrant or dependent.

57. Any employer, and any person acting under his orders or on his behalf, who wilfully obstructs or impedes any visit, entry, inspection or enquiry under section fifty-five or section fifty-six, shall be liable for every such offence to a fine which may extend to five hundred rupees.

Penalty on person obstructing inspection, &c.

Suspension or Cancellation of Assignment.

58. The Inspector of Immigrants, within the local limits of whose authority any immigrant is employed, may suspend, for such period as he thinks fit, the assignment of such immigrant, or any particular term of his contract under this Act, if he be in the judgment of the Inspector temporarily incapacitated for the performance thereof by reason of sickness, or other sufficient cause:

Inspector may suspend assignment of immigrant temporarily unfitted for labour.

Provided that every such immigrant shall, during such incapacity, receive from his employer such subsistence money not exceeding his wages as the Inspector thinks sufficient.

Penalty for compelling immigrant to perform work for which he is unfit.

59. If any immigrant is compelled to perform any species of labour for which he is at the time manifestly unfit, or which is at variance with the terms of his assignment, the person so compelling him shall, on conviction by a Magistrate, be liable to a fine not exceeding one hundred rupees.

Power to discharge immigrants permanently unfitted for labour.

60. If, in the opinion of the Inspector of Immigrants, any immigrant is permanently incapacitated for the performance of his contract, according to the terms of his assignment, the Inspector shall certify to that effect in writing, and deliver such certificate to the employer of such immigrant, or to his manager or agent, and from the date of such delivery the assignment of such immigrant shall be wholly vacated.

The Inspector shall report every such case to the Local Government, and the Local Government shall either provide for the employment and support of the immigrant and his dependents, or return them to the place at which they were registered.

Provisions for the Health and Comfort of Immigrants.

Sufficient house-accommodation, &c., to be provided.

61. Every employer of immigrants shall be bound to provide for them sufficient and proper house-accommodation, water-supply and sanitary arrangements, and such food as the Chief Commissioner may from time to time direct.

Powers of Inspector as to house accommodation, &c.

62. Any Inspector or Assistant Inspector who is himself a Magistrate, may institute within the local limits of his jurisdiction a local enquiry whether any employer has provided for his immigrants sufficient and proper house-accommodation, water-supply, sanitary arrangements or food.

At the instance of any Inspector or Assistant Inspector, a similar enquiry may be made by any Magistrate.

Every such enquiry shall be dealt with and conducted as an enquiry by a Magistrate under the Code of Criminal Procedure.

Penalty for breach of rules as to house-accommodation.

63. Any person disobeying rules passed under section eighty-seven, clause (*e*), shall be liable to a fine not exceeding five hundred rupees, and the convicting Magistrate may order compliance with such rules by the person bound to obey the same within a reasonable time to be fixed in the order.

If such person wilfully omits to comply with such order, he shall be liable to a fine not exceeding fifty rupees a day for every day that such omission continues.

If such person is an agent and fails to pay the fine, such fine shall be charged on the employer's land, and shall be recoverable in the manner provided by section ninety-one.

64. Wherever such hospital-accommodation or medical charge, as required by rules made under section eighty-seven, or medicines of such quality and kind, and according to such scale as aforesaid, have not been provided, the employer or other person wilfully neglecting to provide the same shall be liable to a fine not exceeding one hundred rupees for every week during which any such default continues.

Penalty for breach of rules as to hospital.

Complaints against Immigrants.

65. Any immigrant who voluntarily and without reasonable cause absents himself from his employer's service,

Penalty on immigrant absenting himself without sufficient cause,

or without reasonable cause neglects or refuses to labour as required by his employer or according to the terms of his contract,

or neglecting to labour.

may, on conviction by a Magistrate, be sentenced to lose all claim to wages or allowances during such absence, neglect or refusal, and also to forfeit to his employer a sum not exceeding eight annas for each day during which such absence, neglect or refusal has continued; and in case such absence, neglect or refusal has exceeded seven days, or in case such immigrant has been already convicted of the same offence within a period of three months, he may be further sentenced at the request of the employer to imprisonment for fourteen days.

Explanation.—Ill-treatment of such immigrant by his employer, or the neglect of the employer to fulfil any condition of the contract, may be 'reasonable cause' within the meaning of this section.

66. If any immigrant deserts or attempts to desert from his employer's service, such employer or any other person acting in his behalf may, without warrant, and without the assistance of any police officer (who, nevertheless, shall be bound to give such assistance if called upon to do so), apprehend such immigrant wherever he may be found:

Immigrant deserting may be apprehended without warrant.

Provided that if he be found in the service of another employer, he shall not be arrested without a warrant.

Proviso.

The employer or other person apprehending an immigrant under this section shall, within a reasonable time after such apprehension, give him in charge at the nearest police station, and there enter the charge upon which he has been apprehended.

Further proviso.

Immigrant, when made over to police, to be taken before nearest Magistrate.

67. Any immigrant so given in charge shall be conveyed, without delay, to the nearest Magistrate having jurisdiction.

If the place from which such immigrant is charged with having deserted be within the jurisdiction of such Magistrate, he shall himself adjudicate upon the charge; but if not, he shall forward the said immigrant, under custody, to the Magistrate within the local limits of whose jurisdiction such place is situate, who shall adjudicate upon such charge.

Punishment for desertion.

68. Every immigrant deserting from his employer's service shall be liable to imprisonment which may extend to one month.

Every immigrant who after having been so convicted again deserts from his employer's service, shall be liable to imprisonment which may extend to two months.

Every immigrant who after having been twice so convicted again deserts from his employer's service, shall be liable to imprisonment which may extend to three months.

Cancellation of contract by desertion.

69. Whenever any immigrant has actually suffered imprisonment amounting in the whole to six months for desertion or unlawful absence from his employer's service, the Inspector shall, if the employer so desire, cancel the assignment of such immigrant by endorsement on the immigrant's instrument, or, if that is not forthcoming, by any writing under his hand.

Provisions regarding desertion and unlawful absence to apply to desertion in transit.

70. All the provisions of this Act regarding the desertion or unlawful absence of immigrants shall apply to immigrants who desert from any Government depôt, or while in transit to the district in which they are assigned to labour;

and such immigrants may be tried either in such district or in the district in which they may be apprehended.

Penalty for enticing away, harbouring or employing immigrants under contract to another person.

71. Whoever knowingly and wilfully entices away, harbours, or employs, or attempts to entice from his employment or from any depôt, any immigrant before he has been lawfully released from his contract, shall be liable to a fine not exceeding five hundred rupees, and the convicting Magistrate may award to the employer of such immigrant the whole or any portion of such fine.

Portion of sentence may be cancelled if employer apply for return of immigrant.

72. The employer, or any person authorized to act for the employer, of any immigrant sentenced to imprisonment for any offence under this Act, may apply to the Magistrate, at any time before the expiry of such sentence, that such immigrant be made over to him for the purpose of completing his term of labour;

and the Magistrate may, if he see good cause, make over such immigrant to his employer, and in that case the Magistrate shall cancel the remainder

of the sentence passed on the immigrant, and shall endorse on his instrument, or, if such instrument is not forthcoming, shall give him, a memorandum of such cancellation.

73. When any immigrant has been sentenced to imprisonment for any offence under this Act, the Magistrate shall (subject to the provisions of section sixty-nine) make over such immigrant on the termination of his imprisonment to any person appointed on the part of his employer to receive charge of him;

On expiry of sentence immigrant to be made over to employer.

and no conviction under this Act, or imprisonment under such conviction, shall, save as aforesaid, operate as a release to any immigrant from the terms of his contract:

Conviction not to operate as a release.

The period of imprisonment shall in no case be prolonged by reason of there being no person present on the part of the employer to take charge of the immigrant at the expiry of his sentence; but such immigrant shall, in that case, be sent to the place, or principal place of business, of such employer, and the expense of so sending him shall be levied from the employer in the manner provided by section ninety-one.

74. The duration of every unlawful absence from labour, of which any immigrant may be convicted, and every period of imprisonment for any offence under this Act, shall, on the request of the employer, be endorsed by the convicting Magistrate on the employer's instrument,

Time of unlawful absence and of imprisonment to be included in term of immigrant.

and no such period of imprisonment or unlawful absence so endorsed shall be reckoned as part of the term for which the immigrant is bound to serve, but such term shall extend to such further period as is equivalent to the aggregate amount of the imprisonment and unlawful absence so endorsed.

Complaints against Employers.

75. If any immigrant states to his employer, or to any person acting for such employer, that he desires to make a complaint to the Inspector of Immigrants of personal ill-usage or breach of any provision of this Act on the part of such employer or other person, the person to whom such statement has been made shall, within forty-eight hours, send notice thereof in writing to the Inspector, and in default of so doing, such person shall be liable to a fine not exceeding one hundred rupees.

If immigrant desires to complain, employer to give notice to Inspector.

76. Whenever any Inspector of Immigrants receives such notice in writing as aforesaid, or has other reasonable grounds for believing that any immigrant within the local limits of his jurisdiction has been injured by personal ill-usage or breach of any provision of this Act as aforesaid, he shall, so soon as conveniently may be, make full enquiry into the matter complained of.

Procedure on receipt of notice of complaint.

Procedure if complaint be untrue or frivolous.

77. If, upon such enquiry, the Inspector finds that the complaint is untrue or frivolous or vexatious, he shall enter in his book the particulars of such complaint, and a short statement of the grounds of his finding respecting it, and shall dismiss the complaint;

and in such case shall endorse on the employer's instrument the number of days during which the complainant has been absent from work in consequence of such enquiry,

and such number of days shall be added to the period for which the complainant had contracted to serve,

and every such endorsement shall be conclusive evidence that such immigrant has absented himself from his labour without sufficient cause during the number of days so endorsed.

When the complaint is frivolous and vexatious, the complainant shall be liable on conviction before a Magistrate to a fine not exceeding five rupees.

Procedure if complaint be well founded.

78. If, upon enquiry as aforesaid, the Inspector is of opinion that the complaint is well founded, he shall, if a Magistrate, dispose of the case in due course of law.

If the Inspector is not a Magistrate, he shall without delay send the complainant and his witnesses to the nearest Magistrate, and such Magistrate shall thereupon dispose of the case in due course of law.

Recovery of wages.

79. If, upon the complaint of any immigrant, it is proved to the satisfaction of the Magistrate that the wages of such immigrant are in arrear to an amount exceeding the total of his wages for two months, such Magistrate may award to the complainant the amount which appears to be then due to him; and also, by way of compensation, such further sum, not exceeding that amount, as appears to the Magistrate to be just; and in case of default, the entire sum shall be recovered in manner provided by section ninety-one, and shall be paid to the complainant.

Compensation if wages are due for more than two months.

Cancellation of assignment.

80. If any employer, or any person placed in authority over any immigrant by such employer, is convicted of any offence causing injury to the person or property of such immigrant and triable under the Code of Criminal Procedure by the Court of Session;

or if any such employer, or other person as aforesaid, is twice convicted of any such offence against such immigrant triable under the said Code by a Magistrate;

or if it be proved before a Magistrate that the wages of such immigrant are in arrear to an amount exceeding the total of such wages for three months;

or if a Magistrate, on the report of the Inspector, and after due enquiry in the presence of the parties, is satisfied that any immigrant has been sub-

jected to ill-usage by such employer or any other person placed in authority over the immigrant by such employer, or has been compelled by such employer or person to perform any labour when known to such employer or person to be unfit for it,

the Magistrate may, if he think fit, on the application of the immigrant, in each of such cases cancel the assignment of such immigrant, and award to him, in addition to the wages (if any) due for service performed, compensation not exceeding thirty rupees.

Every such cancelment shall be certified by the Magistrate on the back of the immigrant's instrument, or if such instrument be not forthcoming, by writing under the Magistrate's hand delivered to the immigrant.

The compensation may be recovered in manner provided by section ninety-one.

Determination of Assignments and Contracts.

Immigrant who has completed his assignment may have such completion endorsed.

81. Every immigrant assigned under this Act, on completing the term of his assignment or on the avoidance of the same, may appear before the Inspector or Immigration Agent, who shall, on being satisfied that the term has come to an end, make an entry to that effect on the immigrant's instrument.

Penalty for detaining immigrant after completion of assignment, or for omitting to notify completion.

82. Any employer or agent forcibly or fraudulently detaining an immigrant after the completion or avoidance of his assignment, or wilfully failing to give notice of such completion in accordance with rules prescribed under section eighty-seven, shall be liable to fine not exceeding five hundred rupees.

Power of unassigned immigrant to redeem contract.

83. Any immigrant who is not assigned under this Act may redeem the unexpired term of his contract of service by paying to the Immigration Agent such sum of money as will repay the expense incurred by Government under this Act and chargeable to such immigrant after taking into account any repayment already made by him ; and the certificate of the Immigration Agent shall be conclusive evidence of the sum so chargeable.

Power of assigned immigrant to redeem contract.

84. Any immigrant who is assigned under this Act, and who is desirous to redeem the unexpired term of his contract, may demand to be taken or allowed to go before the Inspector of Immigrants within the local limits of whose authority he may be employed.

The Inspector shall then inform him what is the price at which his contract may be redeemed ;

and on his depositing that price in the hands of the Inspector, the Inspector shall give notice to the employer that such immigrant requires him,

within one week, to show cause why such immigrant should not redeem his contract for the sum so deposited;

and if no sufficient cause be shown within that time or such enlarged time as the Inspector deems reasonable, he shall require the production of the immigrant's instrument and endorse thereon a certificate of redemption, and out of the sum in deposit the employer of such immigrant shall be paid the value of the unexpired term of assignment.

From and after the date of such endorsement the immigrant's contract shall be deemed to have determined.

Value of unexpired term of assignment.

The value of the unexpired term of assignment shall be such as is provided for by the terms of the assignment, or as may be fixed by any rules made under section eighty-seven, clause (*g*), and in force at the date of the assignment.

Certificate of release from contract.

85. Every immigrant whose contract has been completed or otherwise determined, shall be entitled to receive forthwith from the Immigration Agent a certificate of release in such form as may from time to time be prescribed by the Chief Commissioner.

PART V.

Subsidiary Rules.

Power of Local Government of port of embarkation.

86. The Local Government of every port of embarkation under this Act may from time to time make rules consistent with this Act to regulate the following matters—

(*a*) the fees payable under section fourteen;

(*b*) the form of notice of the arrival of emigrants at depôts;

(*c*) the management and regulation of depôts;

(*d*) the medical care of emigrants during their residence at the depôts and during transport;

(*e*) the clothing to be supplied to emigrants during transport;

(*f*) the mode of applying for licenses under section thirty-seven;

(*g*) the survey of emigrant vessels;

(*h*) the procedure on embarkation;

(*i*) the space to be provided for emigrants on board ships sailing from ports of embarkation under this Act;

(*j*) the provisions, fuel and water to be laden on board such vessels, and the daily allowance to be issued to each emigrant;

(*k*) the medical officers, medicines and medical requirements to be on board such vessels ;

(*l*) the ventilation and cleanliness of vessels during the journey, the control of officers, cooks and other servants, and generally the accommodation of emigrants.

87. The Chief Commissioner may from time to time make rules consistent with this Act to regulate the following matters :— Power of Chief Commissioner.

(*a*) the transport of immigrants from ports of debarkation under this Act to the places of their respective employments, their medical inspection during such transport, their detainer at any place on the way on account of sickness, and the accommodation, support and medical treatment of immigrants so detained ;

(*b*) the diet, clothing, medical attendance and management of immigrants in transit ;

(*c*) the hospital-accommodation, medicine and medical attendance to be provided by employers for their immigrants at the place of employment ;

(*d*) the periodical inspection of immigrants : the books to be kept by Inspectors of Immigrants ; and the returns to be made by employers of immigrants ;

(*e*) the house-accommodation, water-supply, sanitary arrangements and supply of suitable food to be provided by employers for their immigrants ;

(*f*) the notice to be given and forms to be observed on the termination of assignments of immigrants ;

(*g*) the terms on which contracts and assignments of service may be redeemed ;

(*h*) the hospital-accommodation and medical care of labourers, and the nature, quality and quantity of medical drugs and other stores to be provided for them ;

(*i*) and generally to provide for the security, well-being, and protection of immigrants.

88. All rules made under sections eighty-six and eighty-seven shall be published— Publication of rules.

in the case of rules made under section eighty-six, in the local official Gazette ;

in the case of rules made under section eighty-seven, in the *British Burma Gazette* ;

and shall thereupon have the force of law.

Whoever wilfully contravenes any of the said rules, for the breach whereof no penalty is hereinbefore specially provided, may for every such Penalty for breach of rules.

offence be punished with fine which may extend to one thousand rupees, and in default of payment, with imprisonment for a term which may extend to six months.

PART VI.

MISCELLANEOUS.

Renewal of lost instruments.

89. If any employer's instrument or any immigrant's instrument be lost or destroyed, the Immigration Agent shall, on application of the employer or immigrant (as the case may be), and on payment of such fee as the Chief Commissioner may fix in this behalf, send the applicant a copy of the instrument so lost or destroyed; and for the purposes of this Act, every copy so delivered shall be deemed to be the original.

Copies made under Act to be evidence of contract.

90. All copies made under this Act shall be evidence of the contracts to which they respectively relate.

Recovery of balances due from employers under terms of assignment.

91. All balances due from any employer of immigrants under the terms of the assignments made to him under this Act, may be levied by the Magistrate either by distress and sale of any moveable property belonging to such employer, or as if they were land-revenue due on account of the land on which the immigrants assigned to such employer are placed.

If the full amount is not recovered by the means aforesaid, the Chief Commissioner may declare the assignment of immigrants to such employer to be void so far as regards all or any of such immigrants, and the labour of the immigrants whose assignment is so vacated shall be again at the disposal of the Chief Commissioner according to section thirty-five.

Construction of former contracts.

92. All contracts for service in British Burma under the Chief Commissioner which have heretofore been entered into shall be construed as if, after the words "Secretary of State for India," the words "in Council" were inserted.

SCHEDULE A.

(*See section* 10).

RECRUITER'S LICENSE.

Office of the Emigration Agent for British Burma at

A. B. is hereby licensed under the British Burma Labour Law, 1876, to act as a recruiter in the district of for the purpose of inducing and engaging persons to proceed to British Burma for the purpose

of labouring for hire on behalf of the Chief Commissioner [*or* E. F., *or as the case may be*].

This license will be in force for one year only from this date.

Dated the *day of*

(Sd.) *C. D.,*

Emigration Agent.

SCHEDULE B.

(*See section* 14).

CERTIFICATE OF MEDICAL OFFICER AS TO HEALTH OF INTENDING EMIGRANT.

I hereby certify that I have this day examined *A. B.*, and that he is, to the best of my belief and judgment, in a fit state of health, and able, in point of physical condition, to proceed to British Burma [and to work there].*

(Sd.) *C. D.,*
[Here add designation of examining officer.]

THE REFORMATORY SCHOOLS ACT, 1876.

CONTENTS.

PREAMBLE.

I.—Preliminary.

SECTION.

1. Short title.
   Local extent.
   Commencement.
2. Section 318 of Code of Criminal Procedure repealed.
3. Interpretation-clause.

II.—Reformatory Schools.

4. Power to establish and discontinue Reformatory Schools.
5. Requisites of schools.
6. Inspection of schools.
7. Power of Courts to direct youthful offenders to be sent to Reformatories.

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* These words to be omitted in case of women and children not engaging for labour.

SECTION.

8. Power of Magistrates to direct boys under sixteen sentenced to imprisonment to be sent to Reformatories.
"Magistrate" defined.
9. Government to determine Reformatory to which such offenders shall be sent.
10. Boys above eighteen not to be detained in school.
11. Discharge or removal by order of Government.

III.—Management of Reformatory Schools.

12. Appointment of Superintendent and Committee of Visitors or Board of Management.
13. Superintendent may license youthful offenders to employers of labour.
14. Cancellation of license.
If complaint of employers just, no fresh license until expiry of twelve months.
15. Determination of license.
16. Cancellation of license in case of ill-treatment.
17. Superintendent to be deemed guardian of youthful offenders.
Power to apprentice youthful offender.
18. Duties of Committee of Visitors.
19. Powers of Board of Management.
20. Power to appoint Trustees or other Managers of a school to be a Board of Management.
21. Power of Board to make rules.
22. Power of Government of India to make rules.

IV.—Offences in relation to Reformatory Schools.

23. Penalty for abetting escape of youthful offender.
24. Arrest of escaped youthful offenders.

ACT No. V OF 1876.

(*Received the Governor General's assent on the 29th February* 1876.)

An Act to provide Reformatory Schools.[a]

Preamble.

WHEREAS it is expedient to provide Reformatory Schools for male youthful offenders; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called "The Reformatory Schools Act, 1876:"

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force in each Province of British India on such day as the Local Government by notification in the official Gazette directs in that behalf.

See 29 & 30 Vic., c. 117.

2. On and from that day section 318 of the Code of Criminal Procedure shall be repealed therein.[a]

Section 318 of Code of Criminal Procedure repealed.

3. In this Act—

Interpretation-clause. "Youthful offender."

"Youthful offender" means any boy who, being at the time under the age of sixteen years, has been convicted of any offence punishable with imprisonment or transportation:

"Inspector-General" includes any officer appointed by the Local Government to perform all or any of the duties imposed by this Act on the Inspector of Jails.

"Inspector-General."

II.—Reformatory Schools.

4. With the previous sanction of the Governor General in Council, the Local Government may—

Power to establish and discontinue Reformatory Schools.

(*a*) establish Reformatory Schools at such places as it thinks fit,

(*b*) use as Reformatory Schools schools kept by persons willing to act in conformity with such rules consistent with this Act as the Local Government may from time to time prescribe in this behalf,

(*c*) direct that any school so established or used shall cease to exist as a Reformatory School or to be used as such.

5. Every school so established or used must provide—

Requisites of schools.

(*a*) sufficient means of separating the inmates at night;

(*b*) proper sanitary arrangements, water-supply, food, clothing and bedding for the youthful offenders detained therein;

(*c*) the means of giving such offenders industrial training;

(*d*) an infirmary or proper place for the reception of such offenders when sick.

6. Every Reformatory School shall, before being used as such, be inspected by the Inspector-General of Jails, and if he reports that the requirements of section five have been complied with and that in his opinion such school is fitted for the reception of such youthful offenders as may be sent there under this Act, he shall certify to that effect, and such certificate shall be published in the local official Gazette, and the school shall thereupon be deemed a Reformatory School.

Inspection of schools.

Every such school shall from time to time, and at least once in every year, be visited by the said Inspector-General, who shall send to the Local Government a report on the condition of the school in such form as the Local Government may from time to time prescribe.

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[a] Act No X of 1875, s. 112, should also have been repealed.

Power of Courts to direct youthful offenders to be sent to Reformatories.

7. Whenever any youthful offender is sentenced to transportation or imprisonment, and is in the judgment of the Court by which he is sentenced (*a*) under the age of sixteen years and (*b*) a proper person to be an inmate of a Reformatory School, the Court may direct that, instead of undergoing his sentence, he shall be sent to a Reformatory School, and be there detained for a period which shall be not less than two years and not more than seven years, and which shall be in conformity with any rules made under section twenty-two and for the time being in force.

The powers so conferred on the Court shall be exercised only by (*a*) the High Court, (*b*) the Court of Session, (*c*) a Magistrate of the first class, and (*d*) a Magistrate of Police or Presidency Magistrate in the towns of Calcutta, Madras and Bombay.

Power of Magistrates to direct boys under sixteen sentenced to imprisonment to be sent to Reformatories.

8. Whenever any youthful offender under the age of sixteen years has been or shall be sentenced to imprisonment, the officer in charge of the Jail in which such offender is confined may bring him before the Magistrate within whose jurisdiction such Jail is situate; and the Magistrate, if he thinks the offender (*a*) under the age of sixteen years and (*b*) a proper person to be an inmate of a Reformatory School, may direct him to be sent to a Reformatory School, and to be there detained for a period which shall be not less than two and not more than seven years and which shall be in conformity with any rules made under section twenty-two and for the time being in force.

"Magistrate" defined.

In this section "Magistrate" means in the towns of Calcutta, Madras and Bombay, a Magistrate of Police or Presidency Magistrate, and elsewhere a Magistrate of the first class.

Government to determine Reformatory to which such offenders shall be sent.

9. Every youthful offender so directed by a Court or Magistrate to be sent to a Reformatory School shall be sent to such Reformatory School as the Local Government may from time to time appoint for the reception of youthful offenders so dealt with by such Court or Magistrate.

Boys above eighteen not to be detained in school.

10. Nothing contained in section seven, eight or nine shall be deemed to authorize the detention in a Reformatory School of any person after he is proved to be above the age of eighteen years.

Discharge or removal by order of Government.

11. The Local Government may at any time order any youthful offender—

(*a*) to be discharged from a Reformatory School;

(*b*) if so discharged before the expiration of his sentence, to undergo the residue of such sentence at such place as the Local Government thinks fit; or

(*c*) to be removed from one Reformatory School to another such school situate within the territories subject to such Government, but so that the whole period of his detention in a Reformatory School shall not be increased by such removal.

III.—Management of Reformatory Schools.

12. For the control and management of every Reformatory School, the Local Government shall appoint either (*a*) a Superintendent and a Committee of Visitors, or (*b*) a Board of Management.

Appointment of Superintendent and Committee of Visitors or Board of Management.

Every Committee and every Board so appointed must consist of not less than five persons, of whom two at least shall be Natives of India.

The Local Government may from time to time suspend or remove any Superintendent or any Member of a Committee or Board so appointed.

13. Every Superintendent so appointed may permit any youthful offender sent to a Reformatory School who has attained the age of fourteen years, by license under his hand, to live under the charge of any trustworthy and respectable person named in the license, or any officer of Government or of a Municipality, being an employer of labour and willing to receive and take charge of him, on the condition that the employer shall keep such offender employed at some trade, occupation or calling.

Superintendent may license youthful offenders to employers of labour.

The license shall be in force for three months and no longer, but may, at any time before the expiration of the period for which the offender has been directed to be detained, be renewed from time to time for three months.

14. The license shall be cancelled at the desire of the employer named in the license;

Cancellation of license.

and if it appears to the Superintendent that any complaint made by the employer of misconduct on the part of the youthful offender is just, no other license in respect of the same offender shall be given until twelve months after the expiration of the former license.

If complaint of employers just, no fresh license until expiry of twelve months.

15. If during the term of the license the employer named therein die, or cease from business, or the period for which the youthful offender has been directed to be detained in the Reformatory School expires, the license shall thereupon cease and determine.

Determination of license.

16. If it appears to the Superintendent that the employer has ill-treated the offender, or has not adequately provided for his lodging and maintenance, the Superintendent may cancel the license.

Cancellation of license in case of ill-treatment.

17. The Superintendent of any Reformatory School shall be deemed to be the guardian of every youthful offender detained in such school, within the meaning of Act No. XIX of 1850 (*concerning the binding of apprentices*),

Superintendent to be deemed guardian of youthful offenders.

and if it appear to the Superintendent that any such offender licensed under section thirteen has behaved well during one or more periods of his license, the Superintendent may apprentice him under the provisions of the

Power to apprentice youthful offender.

said Act, and on such apprenticement the right to detain such offender in the school shall cease and the unexpired term (if any) of his sentence shall be cancelled.

Duties of Committee of Visitors.

18. Every Committee of Visitors appointed under section twelve for any Reformatory School shall, at least once in every month,

(*a*) visit the school, to hear complaints and see that the requirements of section five have been complied with, and that the management of the school is proper in all respects,

(*b*) examine the punishment-book,

(*c*) bring any special cases to the notice of the Inspector-General, and

(*d*) see that no person is illegally detained in the school.

Powers of Board of Management.

19. If in exercise of the power conferred by section twelve, the Local Government appoints a Board of Management for any Reformatory School, such Board shall have the powers and perform the functions of the Superintendent under sections thirteen to seventeen, both inclusive; and the license mentioned in section thirteen may be under the hand of their chairman; and they shall be deemed to be the guardians of the youthful offenders detained in such school.

Power to appoint Trustees or other Managers of a school to be a Board of Management.

20. The Local Government may declare any body of Trustees or Managers of a school, who are willing to act in conformity with the rules referred to in section four, clause (*b*), to be a Board of Management under this Act, and thereupon such body or Managers shall have all the powers and perform all the functions of such Board of Management.

Power of Board to make rules.

21. With the previous sanction of the Local Government, every Board of Management of a Reformatory School may from time to time make rules consistent with this Act to regulate—

(*a*) the conduct of business of the Board,

(*b*) the management of the school,

(*c*) the education and industrial training of youthful offenders,

(*d*) visits to and communication with youthful offenders,

(*e*) punishments for offences committed by youthful offenders,

(*f*) the granting of licenses for employment of youthful offenders.

In the absence of a Board of Management, the Local Government may from time to time make rules consistent with this Act to regulate for any Reformatory School the matters mentioned in clauses (*b*), (*c*), (*d*), (*e*) and (*f*) of this section, and also the mode in which the Committee of Visitors shall conduct their business.

Power of Government of India to make rules.

22. The Governor General in Council may from time to time make rules consistent with this Act for regulating the periods for which Courts and Ma-

gistrates may send youthful offenders to Reformatory Schools according to their ages, the nature of their respective offences, or other considerations.

All rules made under this section shall be published in the *Gazette of India.*

IV—Offences in relation to Reformatory Schools.

23. Whoever abets an escape, or an attempt to escape, on the part of a youthful offender from a Reformatory School, or from the employer of such offender, shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one hundred rupees, or with both. Penalty for abetting escape of youthful offender.

24. A Police officer may, without orders from a Magistrate, and without a warrant, arrest any youthful offender sent to a Reformatory School under this Act, who has escaped from such school, or from his employer, and take him back to such school or to his employer. Arrest of escaped youthful offenders.

ACT No. VII of 1876.

Received the Governor General's assent on the 21st March 1876.

An Act to extend the Criminal Tribes Act, 1871, to the Lower Provinces of Bengal and to amend the same Act.

Whereas it is expedient to extend Act No. XXVII of 1871 (*for the Registration of Criminal Tribes and Eunuchs*) to the Lower Provinces of Bengal and to amend the same Act in manner hereinafter appearing; It is hereby enacted as follows:— Preamble.

1. Section one of the said Act shall be read as if, after the words 'Lieutenant-Governors of,' the following word were inserted (namely), 'Bengal.' Extension of Act XXVII of 1871, section 1, to Lower Provinces.

2. Section eighteen of the said Act shall be read as if in the second clause, after the words 'persons reside,' the following words were inserted (namely), 'or the agents of such landowners or occupiers.' Amendment of section 18, Act XXVII of 1871.

Section twenty-one of the said Act shall be read as if in the first clause, after the words 'persons reside', the following words were inserted (namely), 'or of the agent of any such owner or occupier,' Amendment of section 21, Act XXVII of 1871.

and as if in the fourth clause, after the words 'occupier of land,' the following words were inserted (namely), 'or of the agent of such owner or occupier.'

And section twenty-two of the same Act shall be read as if, after the words 'occupier of land,' the following words were inserted (namely), 'or the agent of such owner or occupier.' Amendment of section 22, Act XXVII of 1871.

THE NATIVE PASSENGER SHIPS ACT, 1876.

CONTENTS.

PREAMBLE.

CHAPTER I.—PRELIMINARY.

SECTION.

1. Short title.
2. Extent and application of Act.
3. Commencement.
4. Repeal of Acts.
5. Interpretation-clause.

CHAPTER II.—RULES FOR ALL VOYAGES.

6. Ship to sail only from ports appointed by Government.
7. Master to give notice of day of sailing, &c.
8. Power to enter and inspect ship.
9. Not to sail without two certificates.
   Port-clearance.
10. Contents of certificate A.
11. Contents of certificate B.
12. Grant of certificate B.
13. Grant of certificate A.
14. Ship may be surveyed.
    Proviso as to ships holding certificate mentioned in section 13.
    Expense of survey.
15. Certificate not to be granted where cargo dangerous or dangerously stowed.
    Discretion of officer.
16. Discretion to be subject to control of Government.
17. Copy of certificate to be exhibited.
18. Contract by passengers for supply of their own provisions.

CHAPTER III.—RULES FOR SHORT VOYAGES.

19. Space to be provided for intermediate or between-decks passengers.
20. Ship taking additional passengers at intermediate port.
21. Report of deaths on the voyage.

CHAPTER IV.—Rules for long Voyages.

Section.

22. Space to be provided for passengers.
23. Statement of passengers.
24. Deaths on voyage.
    Procedure on arrival.
25. Ship taking additional passengers and touching at intermediate port.
26. Bond when ship clears for port in Red Sea.
27. Ships sailing to or from port in Red Sea to touch at Aden.
28. Bill of health.

CHAPTER V.—Penalties.

29. Penalty for ship unlawfully departing.
30. Penalty for opposing entry on or inspection of ships.
31. Penalty for not exhibiting copy of certificate.
32. Penalty for non-compliance with requirements as to list of passengers.
    Penalty for failing to obtain fresh certificate for additional passengers taken.
33. Penalty for fraudulent alteration in ship after certificate obtained.
34. Penalty for failing to supply passengers with prescribed provisions.
35. Penalty for not obtaining bill of health.
36. Penalty for excess of number specified in certificate.
37. Penalty for bringing Native passengers from eastern port in excess of authorized proportion.
38. Penalty for landing passenger at place other than that at which he has contracted to land.

Procedure.

39. Adjudication of offences.
    Fine leviable by distress on ship.
40. Jurisdiction.
41. By whom proceedings for penalties to be instituted.
42. Application of fines.
43. Depositions receivable when witnesses cannot be produced.

CHAPTER VI.—Miscellaneous.

44. Information to be sent to ports of embarkation.
45. Report of Consul.
46. Power to make rules as to provisions, stores, boats, &c.
47. Appointment of officers.
48. Power to declare what shall be deemed 'seasons of fair weather' and 'long voyages.'
49. Power to prescribe space to be contained for passengers.

Schedule.

ACT No. VIII of 1876.

Received the Governor General's assent on the 28th March 1876.

An Act to consolidate and amend the law relating to Native Passenger Ships.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Native Passenger Ships: It is hereby enacted as follows :—

CHAPTER I.—PRELIMINARY.

Short title.

1. This Act may be called "The Native Passenger Ships Act, 1876."

Extent and application of Act.

2. It extends to the whole of British India, and applies—

(*a*) to all subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty;

(*b*) to all native Indian subjects of Her Majesty without and beyond British India; and,

(*c*) subject to the exceptions mentioned in the subsequent part of this section, to vessels carrying more than thirty passengers, being Natives of Asia or Africa.

Nothing herein contained applies—

(*d*) to any Ship-of-War or Transport belonging to, or in the service of, Her Majesty;

(*e*) to any Ship-of-War belonging to any Foreign Prince or State;

(*f*) to any sailing-vessel not carrying as passengers more than thirty Natives of Asia or Africa;

(*g*) to any steamer not carrying as passengers more than sixty of such Natives:

(*h*) to any sailing-vessel or steamer not intended to convey passengers to or from any port in British India.

Commencement.

3. This Act shall come into force on such day as the Governor General in Council directs by notification in the *Gazette of India*.

Repeal of Acts.

4. On and from that day the Acts specified in the schedule hereto annexed shall be repealed.

But all ports, places and officers appointed, and all certificates granted under any of such Acts, shall be deemed to be respectively appointed and granted under this Act;

and the last clause of section one of Act No. II of 1860 (*to amend the law relating to the Carriage of Passengers by Sea*) shall be read as follows :—

"Voyages from ports in British India to ports in the Red Sea or Persian Gulf; under the Native Passengers Ships Act, 1876."

5. In this Act— Interpretation-clause.

the expression "Magistrate" means a person exercising powers not inferior to those of a Magistrate of the second class, and includes a Justice of the Peace, and, at the Port of Aden, the Political Resident and his Assistants : "Magistrate."

the expression "ship" includes every description of vessel used in navigation not propelled by oars : "Ship."

the expression "Master" includes every person (other than a pilot) having command or charge of a ship : "Master."

the expression "Passenger" means a person above the age of twelve years, or two persons between the ages of one year and twelve years ; but it does not include a person in attendance on another person who is not a Native of Asia or Africa, nor a child under one year of age : "Passenger."

the expression "voyage" means the whole distance between the ship's port of departure and her final port of arrival : "Voyage."

the expression "long voyage" means any voyage during which the ship performing it will under ordinary circumstances be one hundred and twenty hours or upwards continuously out of port : "Long voyage."

the expression "short voyage" means any voyage during which the ship performing it will never under ordinary circumstances be one hundred and twenty hours continuously out of port ; "Short voyage."

Illustration.

A ship starts from port A, and is destined finally to arrive at port B, between which ports the ordinary distance is ten days : but she is to touch at four intermediate ports, no one of which is under ordinary circumstances more than five days from the next one. This is a short voyage.

the expression "Chief officer of Customs" means the executive officer of highest rank in the Department of Customs in any port to which this Act applies. "Chief Officer of Customs."

CHAPTER II.—Rules for all Voyages.

6. No ship carrying passengers shall depart or proceed from, or shall discharge passengers at, any port or place within British India other than Ship to sail only from ports ap-

pointed by Government

such ports and places as the Local Government may from time to time appoint in this behalf;

and after any ship has departed or proceeded upon any voyage from a port or place so appointed, no person shall be received on board as a passenger, except at some other port or place so appointed.

Master to give notice of day of sailing, &c.

7. The Master, Owner or Agent of every ship so departing or proceeding shall give notice to an officer authorized in this behalf by the Local Government that the ship is to carry Native passengers, and of her destination, and of the proposed time of sailing.

Such notice shall be given not less than twenty-four hours before such time.

Power to enter and inspect ship.

8. After receiving such notice, the officer aforesaid, or any person authorized by him, shall be at liberty at all times to enter and inspect the ship and the fittings, provisions, and stores therein.

Not to sail without two certificates.

9. No ship intended to carry passengers shall commence any voyage from any port or place appointed under this Act, unless the Master holds two certificates to the effect hereinafter mentioned.

Port-clearance.

And the officer of Government whose duty it is to grant a port-clearance for such ship shall not grant the same unless the Master holds such certificates.

Contents of certificate A

10. The first of such certificates (hereinafter called 'certificate A') shall state that the ship is seaworthy and properly equipped, fitted and ventilated; and the number of passengers that she is capable of carrying.

Contents of certificate B

11. The second of such certificates (hereinafter called 'certificate B') shall state—

(*a*) the voyage which the ship is intended to make, and the intermediate ports (if any) at which she is intended to touch;

(*b*) that she has the proper complement of officers and seamen;

(*c*) that provisions, fuel and pure water, over and above what is necessary for the crew, and the other things (if any) prescribed for the ship by rule under section forty-six, have been placed on board, of the quality prescribed by rule under the same section, properly packed, and sufficient to supply the passengers on board during the declared duration of the intended voyage, according to the scale for the time being prescribed by rule under the same section;

(*d*) that the Master holds certificate A;

(*e*) if she is intended to make a short voyage in a season of foul weather, and to carry upper-deck passengers, that she is furnished with substantial bulwarks and a double awning or other sufficient protection against the weather;

(*f*) such other particulars (if any) as may for the time being be required for such ship under this Act.

12. The person by whom certificate B is to be granted shall in all cases be the officer referred to in section seven. Grant of certificate B.

13. The person by whom certificate A is to be granted shall be the officer aforesaid, except that, if the Master of a ship produce to such officer either of the following certificates (namely)— Grant of certificate A.

(*a*) a valid certificate granted by the Board of Trade or by any British Colonial Government;

(*b*) a certificate granted under the authority of any British Indian Government, and dated not more than six months before the proposed day of sailing,

and if the particulars required by section ten are certified thereby,

such officer may take any such certificate as evidence of such particulars, and it shall then be a valid certificate for the purposes of this Act.

14. After receiving the notice required by section seven, the officer aforesaid may, if he think fit, cause the ship to be surveyed at the expense of the Master or Owner by competent surveyors, who shall report to him whether the ship is, in their opinion, seaworthy and properly equipped, fitted and ventilated for her intended voyage: Ship may be surveyed.

Provided that he shall not cause any ship holding any certificate mentioned in section thirteen, clause (*a*) or clause (*b*), to be surveyed unless, from the ship having met with damage or having undergone alterations, or on other reasonable ground, he considers it likely that she may be found unseaworthy or not properly equipped, fitted or ventilated for her intended voyage. Proviso as to ships holding certificate mentioned in section 13.

If the officer aforesaid causes a survey to be made of any vessel holding any such certificate, and if the surveyors report that the vessel is seaworthy and properly equipped, fitted and ventilated for her intended voyage, and that there was no reasonable ground why the officer aforesaid should have thought it likely that she would be found unseaworthy, or not properly equipped, fitted or ventilated for her intended voyage, the expense of the survey shall be paid by the Local Government. Expense of survey.

15. The officer authorized to grant a certificate under this Act, in respect of any ship, shall not grant the same, unless he is satisfied that she has not on board any cargo likely from its quality, quantity, or mode of stowage, to prejudice the health or safety of the passengers. Certificate not to be granted where cargo dangerous or dangerously stowed.

But save as aforesaid, and subject to the provisions of section sixteen, the grant or withholding of a certificate under this chapter shall in all cases be in the discretion of the officer aforesaid. Discretion of officer.

Discretion to be subject to control of Government.

16. In the exercise of such discretion such officer shall be subject to the control of the Local Government, or of any intermediate authority which that Government may from time to time appoint in this behalf.

Copy of certificate to be exhibited.

17. The Owner or Master shall put up in a conspicuous part of the ship, so as to be visible to persons on board the same, a copy of each of the said certificates granted by an officer appointed under this Act in respect of the ship, and shall keep such copies in such position during the voyage.

Contract by passengers for supply of their own provisions.

18. The requirements of this Act respecting the supply of provisions for passengers shall not, except as to the supply of water, be applicable to any passenger who has contracted to furnish his own provisions, and who has, in the opinion of such officer as the Local Government appoints in this behalf, actually furnished such provisions of the quality and to the amount for the time being prescribed by rules made under section forty-six.

CHAPTER III.—Rules for short Voyages.

Space to be provided for intermediate or between-decks passengers.

19. For seasons of fair weather, every ship performing a short voyage shall contain in the between-decks at least six superficial feet and thirty-six cubic feet of space for every intermediate or between-decks passenger, and shall contain on the upper-deck at least four superficial feet for each such passenger and six superficial feet for each upper-deck passenger.

For seasons of foul weather, every ship propelled by sails and performing a short voyage shall contain in the between-decks at least twelve superficial feet and seventy-two cubic feet of space for every intermediate or between-decks passenger, and shall contain on the upper-deck at least four superficial feet for each such passenger and twelve superficial feet for each upper-deck passenger.

For seasons of foul weather, every ship propelled by steam, or partly by steam and partly by sails, and performing a short voyage, shall contain in the between-decks at least nine superficial feet and fifty-four cubic feet of space for every intermediate or between-decks passenger, and shall contain on the upper-deck at least four superficial feet for each such passenger and nine superficial feet for each upper-deck passenger.

But in such seasons no ship shall carry upper-deck passengers unless she is furnished with substantial bulwarks and a double awning or other sufficient protection against the weather.

Ship taking additional passengers at

20. If any ship performing a short voyage takes any additional passengers on board at any intermediate port or place, the Master shall

obtain a supplementary certificate from the proper officer at such port, stating— intermediate port.

(*a*) the number of passengers so taken on board, and

(*b*) that provisions, fuel and pure water (over and above what is necessary for the crew, and the other things, if any, prescribed for the ship by rule under section forty-six) have been placed on board, of the quality prescribed by rule under the same section, properly packed, and sufficient to supply the total number of passengers on board during the declared duration of the intended voyage, according to the scale for the time being prescribed by rule under the same section :

Provided that, if the certificate B held by the Master of such ship states that provisions, fuel and pure water, over and above what is necessary for the crew, and the other things, if any, prescribed for her by rule under section forty-six, have been placed on board, of the quality prescribed by rule under the same section, properly packed and sufficient to supply the full number of passengers that she is capable of carrying, the Master shall not be bound to obtain any such supplementary certificate.

21. When the ship reaches her final port of arrival, the Master shall notify to such officer as the Governor General in Council may appoint in this behalf, the date and supposed cause of death of every passenger dying on the voyage. Report of deaths on the voyage.

CHAPTER IV.—Rules for long Voyages.

22. Every ship propelled by sails and performing a long voyage shall contain in the between-decks at least twelve superficial feet and seventy-two cubic feet of space for every passenger. Space to be provided for passengers.

Every ship propelled by steam, or partly by steam and partly by sails, and performing a long voyage, shall contain in the between-decks at least nine superficial feet and fifty-four cubic feet of space for every passenger.

23. The Master of every such ship, before departing or proceeding on any long voyage from any port or place in British India, shall sign two statements, specifying the number and the respective sexes of all the passengers, and stating the number of the crew ; and shall deliver them to the officer last aforesaid, who shall thereupon (after having first satisfied himself, that the numbers are correct) countersign and return to the Master one of such statements. Statement of passengers.

24. The Master shall note in writing on such last-mentioned statement, and on any additional statement to be made under the next following section, the date and supposed cause of death of any passenger who may die on the Deaths on voyage.

voyage, and shall forthwith, on the arrival of the ship at her destination or at any port at which it may be intended to land passengers, and before any passengers are landed, produce the statement, with any additions thereto made, to any person lawfully exercising Consular authority on behalf of Her Majesty at the port of arrival if it be a foreign port, or to the Chief Officer of Customs, or the officer (if any) appointed under this Act to receive such statements, at any port or place at which it is intended to land the passengers or any of them.

Procedure on arrival.

Ship taking additional passengers and touching at intermediate port.

25. If, after the ship has departed or proceeded on any long voyage, any additional passengers are taken on board at a port or place within British India appointed under this Act for the embarkation of passengers,

or if such ship upon her voyage touch or arrive at any such port, having previously received on board additional passengers at any place without British India,

the Master shall obtain a fresh certificate to the effect of certificate B from the proper officer at such port, and shall make additional statements specifying the number and the respective sexes of all such additional passengers;

and all the provisions hereinbefore contained in that behalf shall be applicable to any certificate granted or statement made under this section.

Bond when ship clears for port in Red Sea.

26. In the case of every ship sailing from any port within British India to any port in the Red Sea, the officer whose duty it is to grant a port-clearance for any such ship shall not grant such clearance unless and until the Owner, Agent or Master of such ship and two sureties resident in British India have by a joint and several bond become bound unto the Secretary of State for India in Council in the penal sum of five thousand rupees for the purpose of binding the ship to touch at Aden on the outward voyage, and there to obtain a clean bill of health, and to do the same on the homeward voyage if she continue (being propelled by sails) to carry more than thirty passengers, or (being propelled by steam or partly by steam and partly by sails) to carry more than sixty passengers.

Ships sailing to or from port in Red Sea to touch at Aden.

27. Every ship carrying more than thirty passengers being Natives of Asia or Africa, and sailing from any port in British India to any port in the Red Sea,

or sailing from any port in the Red Sea to any port in British India,

shall touch at Aden, and shall not leave that port without having obtained from the proper authority a clean bill of health.

Bill of health.

28. No bill of health shall be granted under section twenty-six or section twenty-seven in case the ship has on board a greater number of passengers than in the proportion prescribed for her by this Act.

CHAPTER V.—PENALTIES.

29. If any ship departs or proceeds upon a voyage from, or discharges passengers at, any port or place within British India in contravention of the provisions of section six or section nine,

Penalty for ship unlawfully departing.

or if any person is received as a passenger on board a ship in contravention of the provisions of the second clause of section six,

the Owner or Master shall, for every passenger conveyed in such ship, or for every passenger so discharged or received on board, be liable to a penalty not exceeding one hundred rupees, or to imprisonment not exceeding one month, or to both;

and the ship, if found within two years in any port within British India, may be seized and detained by any Chief Officer of Customs until the penalties incurred under this Act by her Owner or Master have been adjudicated, and the payment of the fines imposed on him under this Act, with all costs, has been enforced, under the provisions hereinafter contained.

30. Any person impeding or refusing to allow the entry or inspection authorized under this Act, shall be liable to a fine not exceeding five hundred rupees for each offence, or to imprisonment for a term not exceeding three months, or to both.

Penalty for opposing entry on or inspection of ships.

31. Any Owner or Master wilfully failing to comply with the requirements of section seventeen, as to copies of certificates, shall, for every such failure, be liable to fine not exceeding two hundred rupees, or to imprisonment for any term not exceeding a month, or to both.

Penalty for not exhibiting copy of certificate.

32. Any Master failing to comply with any of the requirements of section twenty-three or section twenty-four, as to the statement of passengers,

Penalty for non-compliance with requirements as to list of passengers.

or wilfully making any false entry or note in or on any such statement,

or wilfully failing to obtain any such supplementary certificate as is mentioned in section twenty, or to report deaths as required by section twenty-one, or to obtain any such fresh certificate, or to make any such statement of the number of additional passengers, as is mentioned in section twenty-five,

Penalty for failing to obtain fresh certificate for additional passengers taken.

shall be liable to a fine not exceeding five hundred rupees for every such offence, or to imprisonment for a term not exceeding three months, or to both.

33. Any Master who, after having obtained any of the certificates mentioned in section nine or section twenty, or section twenty-five, fraudulently does or suffers to be done anything whereby such certificate becomes

Penalty for fraudulent alteration in ship after

certificate obtained.

inapplicable to the altered state of the ship, her passengers, or other matters to which such certificate relates, shall be liable to a fine not exceeding two thousand rupees, or to imprisonment not exceeding six months, or to both.

Penalty for failing to supply passengers with prescribed provisions.

34. Any Master wilfully, and without satisfactory excuse, omitting to supply to any passenger the allowance of food, fuel and water prescribed by rule made under this Act and for the time being in force, shall be liable to a fine not exceeding twenty rupees for every passenger who has sustained detriment by such omission.

Penalty for not obtaining bill of health.

35. The Master of any ship described in section twenty-seven, who wilfully fails to touch at Aden, or leaves that port without having obtained the bill of health therein mentioned, shall, for every such offence, be liable to a fine not exceeding two thousand rupees, or to imprisonment not exceeding six months, or to both.

Penalty for excess of number specified in certificate.

36. If any ship has on board any number of passengers which, having regard to the time of the year and other circumstances, is greater than the number allowed by the certificate, or, if arriving from a port where no certificate could be procured, has on board a number of passengers exceeding the number allowed by this Act for such ship, the Owner and Master shall, for every passenger over and above the number allowed by the certificate, be each liable to a fine not exceeding twenty rupees, and the Master shall further be liable for each of such passengers to imprisonment not exceeding one week : Provided that the total term of imprisonment awarded under this section shall in no case exceed six months.

Any officer authorized in this behalf by the Local Government may cause all passengers over and above such number to disembark, and may forward them to any port of British India, and may recover the cost of so forwarding them from the Owner or Master of the ship as if such cost was a fine imposed under this Act, and a certificate under the hand of such officer shall be conclusive evidence of the amount of the cost aforesaid.

Penalty for bringing Native passengers from Eastern port in excess of authorized proportion.

37. If any ship bringing Native passengers from any port or place beyond British India, into any port or place in British India, has on board a greater number of passengers than in the proportion prescribed by section nineteen, section twenty-two, or section forty-nine (as the case may be), or than the number allowed by the license or certificate (if any) granted in respect of such ship at her port or place of departure, the Owner and Master shall, for every passenger in excess of such proportion or of the number so allowed, be each liable to a fine not exceeding twenty rupees.

Penalty for landing passenger at a

38. If the Master of any ship to which this Act applies lands any passenger at any port or place other than the port or place at which he may

have contracted to land, unless with his previous consent, or unless such landing is made necessary by perils of the sea or other unavoidable accident, the Master shall, for every such offence, be liable to a penalty not exceeding two hundred rupees, or to imprisonment for any term not exceeding a month, or to both.

place other than that at which he has contracted to land.

Procedure.

39. All offences against this Act shall be punishable in a summary manner by a Magistrate.

Adjudication of offences.

If the person on whom any fine is imposed under this Act is the Master or Owner of a ship, and the fine is not paid at the time and in the manner prescribed by the order of payment, the Magistrate may, in addition to the ordinary means prescribed by law for enforcing payment, direct by warrant the amount remaining unpaid to be levied by distress and sale of the said ship, her tackle, furniture and apparel.

Fine leviable by distress on ship.

40. For the purpose of the adjudication of penalties under this Act, every offence against its provisions shall be deemed to have been committed within the limits of the jurisdiction of the Magistrate of the place where the offender is found.

Jurisdiction.

41. The penalties to which Masters and Owners of ships are made liable by this Act, shall be enforced only by information laid at the instance of the officers appointed to grant certificates under this Act; or, at any port or place where there is no such officer, at the instance of the Chief Officer of Customs.

By whom proceedings for penalties to be instituted.

42. Any Magistrate imposing any fine under this Act may, if he thinks fit, direct the whole or any part thereof to be applied in compensating any person for any detriment which he may have sustained by the act or default in respect of which such fine is imposed, or in or towards payment of the expenses of the proceedings.

Application of fines.

43. Whenever, in the course of any legal proceeding under this Act, the testimony of any witness is required in relation to the subject-matter of such proceeding, any deposition that he may have previously made in relation to the same subject-matter before any Justice or Magistrate in Her Majesty's dominions (including all parts of India other than those subject to the same Local Government as the port or place where such proceedings are instituted), or any British consular officer elsewhere, shall be admissible in evidence on due proof that such witness cannot be found within the jurisdiction of the Court in which such proceeding is instituted:

Depositions receivable when witnesses cannot be produced.

Provided that such deposition shall not be admissible unless—

(*a*) it is authenticated by the signature of the Justice, Magistrate, or consular officer;

(*b*) it was made in the presence of the person accused, and

(*c*) the fact that it was so made is certified by the Justice, Magistrate, or consular officer.

It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition; and in any criminal proceeding, such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified.

CHAPTER VI.—MISCELLANEOUS.

Information to be sent to ports of embarkation.

44. The Chief Officer of Customs, or the officer (if any) appointed under this Act, at any port or place within British India at which any ship to which this Act applies touches or arrives, shall, with advertence to the provisions herein contained, send any particulars which he may deem important respecting the ship and the passengers conveyed therein, to the officer at the port from which the ship commenced her voyage, and also to the officer at any other port within British India where the passengers or any of them embarked.

And any officer appointed under this Act may at any port or place in British India at which any ship to which this Act applies touches, board such ship and inspect her in order to ascertain whether the provisions of this Act as to the number of passengers and otherwise have been complied with.

Report of Consul.

45. In any proceeding for the adjudication of any penalty incurred under this Act, any document purporting to be a report of such particulars or a copy of the proceedings of any Court of justice duly authenticated, and also any like document purporting to be made and signed by any person lawfully exercising consular authority on behalf of Her Majesty in any foreign port, shall be received in evidence, if the same appears to have been officially transmitted to any officer at or near the place where the proceeding under this Act is had.

Power to make rules as to provisions, stores, boats, &c.

46. The Governor General in Council may from time to time make rules consistent with this Act, to regulate, in the case of any ship or class of ships to which this Act applies, all or any of the following matters:—

(*a*) the scale on which provisions, fuel and water are to be supplied to the passengers and the quality of such provisions, fuel and water;

(*b*) the medical stores and other appliances and fittings for maintaining health, cleanliness and decency to be provided on board;

(*c*) the boats, anchors and cables to be provided on board;

(*d*) the instruments for purposes of navigation to be supplied;

(*e*) the apparatus for the purpose of extinguishing fires on board and the precautions to be taken to prevent such fires;

(*f*) and, generally, to carry out the provisions of this Act.

All such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

Appointment of officers.

47. The Local Government shall appoint such persons as it thinks fit to exercise and perform the powers and duties conferred and imposed by this Act.

Power to declare what shall be deemed 'seasons of fair weather' and 'long voyages.'

48. The Governor General in Council may from time to time declare, by notification in the *Gazette of India*, what shall be deemed to be, for the purposes of this Act, "seasons of fair weather" and "seasons of foul weather," and for sailing vessels and steamers respectively, a "long voyage" and a "short voyage."

Power to prescribe space to be contained for passengers.

49. The Governor General in Council may from time to time direct, in the case of any ship or class of ships, and for all or any voyages to which this Act applies, the number of superficial or of cubic feet of space to be contained for the passengers; and such direction shall override the provisions of sections nineteen and twenty-two so far as they apply to such ship or class of ships.

SCHEDULE.

(*See section* 4.)

Number and year.	Title.
XXV of 1859	An Act to prevent the overcrowding of Vessels carrying Native Passengers in the Bay of Bengal.
XII of 1870	An Act for the regulation of Native Passenger Ships, and of Steam Vessels intended to convey Passengers on coasting voyages.
XII of 1872	An Act to amend Act XII of 1870 (*The Native Passenger Ships Act*).
Madras Act II of 1862 ..	An Act to extend the provisions of Act XXV of 1859, entitled An Act to prevent the overcrowding of Vessels carrying Native Passengers in the Bay of Bengal.

ACT No. IX of 1876.

Received the Governor General's assent on the 28th March 1876.

An Act to enable the Government of India to declare certain coins of Native States to be a legal tender in British India.

Preamble.

WHEREAS it is expedient to enable the Governor General in Council to declare that a tender of payment of money, if made in certain coins made for or issued by Native States, shall be a legal tender in British India; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Native Coinage Act, 1876":

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force at once.

Interpretation-clause.

2. In this Act "Native State" means any State in India which is under the protection or political control of Her Majesty, or of which the Government shall have acknowledged the supremacy of the British Crown.

Power to declare that the coins of a Native State shall be legal tender.

3. Subject to the provisions of section four, the Governor General in Council may, from time to time, by notification in the *Gazette of India*, declare that a tender of payment of money, if made in the coins, or the coins of any specified metal, made under this Act for any Native State, shall be a legal tender in British India;

and the provisions of the Indian Coinage Act, 1870, shall apply to the coins to which such notification refers, so far as such provisions are applicable thereto, and save as expressly provided by such notification.

When such power may be exercised.

4. The power conferred by the first clause of section three shall be exercisable only when the coins referred to in such notification comply with the following conditions (that is to say)—

in the case of coins of gold, silver or bronze,

(*a*) their fineness is identical with that for the time being prescribed by law for coins of the Government of India of the same metal;

in the case of coins whether of gold, silver, bronze or copper,

(*b*) they are identical in weight with some coins of the Government of India of the same metal, which may for the time being be legally coined at any Mint of the Government of India, or bear such relation thereto as is approved by the Governor General in Council;

(*c*) the devices upon their obverse and reverse differ from the devices on coins now made or issued by any such Native State, and have been approved by the Governor General in Council;

(*d*) upon each of such coins its value in money of the Government of India is inscribed in the English language;

(*e*) the Native State for which they are coined has undertaken to abstain during a term of not less than thirty years, from the date of the notification, from coining in its own Mint gold, silver, bronze or copper, as the case may be, and has also undertaken that no coins resembling coins for the time being a legal tender in British India shall, after the expiration of the said term, be struck under its authority or with its permission at any place within or without its jurisdiction;

(*f*) such State has formally declared that a tender of payment of money, if made in coins of the Government of India of the same metal shall, in the territories subject to such State, be a legal tender in the cases in which payment made in such coins would, under the law for the time being in force, be a legal tender in British India;

(*g*) such State has also agreed that the law and rules for the time being in force respecting the cutting and breaking of coin of the Government of India reduced in weight by reasonable wearing or otherwise, or counterfeit, or called in by proclamation, shall apply to the coins made for such State under this Act, and that it will defray the cost of cutting and breaking them; and

(*h*) such State has also agreed not to issue the same coins below their nominal value, and not to allow any discount or other advantage to any person in order to bring them into circulation.

Native States authorized to send metal to British India Mint for coinage.

5. It shall be lawful for any such State to send to any Mint in British India metal to be made into coin under this Act; and, subject to the Mint-rules for the time being in force, and to the provisions hereinafter contained, the Mint-master shall receive such metal and convert it into coin, provided that it be fit for coinage.

Nothing herein contained shall be deemed to entitle any such State to have coins made under this Act at any Mint of the Government of India of any metal which is not for the time being legally coined at such Mint.

Power to impose a charge for coinage.

6. The Governor General in Council may impose on any metal sent to a Mint for coinage under this Act the duty (if any) leviable on the same metal under the Indian Coinage Act, 1870, and also a charge sufficient to defray the expenses of coinage over and above the expenses of assay and refining; and the Mint-master shall coin such metal at the charge so imposed.

Power to limit number of coins to be made under this Act for any Native State.

7. The Governor General in Council may, from time to time, with reference to the reasonable requirements of the population of any Native State, fix the maximum number of any coins of any particular metal that shall be coined under this Act.

THE PRESIDENCY BANKS ACT, 1876.

CONTENTS.

PREAMBLE

CHAPTER I.—PRELIMINARY.

SECTION.

1. Short title.
   Commencement.
2. Repeal of enactments.
   References in Act X of 1866.
3. Interpretation-clause.

CHAPTER II.—CONSTITUTION.

4. Proprietors and shareholders of present Banks to form bodies corporate, with limited liability.
   Proprietors and shareholders of present Banks to be proprietors and shareholders of new Banks.
5. Property of present Banks to vest respectively in new Banks.
   Claims against present Banks.
6. New Bank of Bombay, Limited, wound up.
7. Banks to sue and be sued in corporate name,
   and use corporate seals;
   and may hold and transfer property.
8. Seal how used.
9. Contracts how made.

CHAPTER III.—CAPITAL.

10. Capital of Bank of Bengal.
    Capital of Bank of Madras.
    Capital of Bank of Bombay.

SECTION.
11. Capital of New Bank of Bombay, Limited, to be capital of Bank of Bombay.
12. Surrender of paid-up shares for stock.
Surrender of stock for shares.
13. Power to increase or reduce capital.
14. Procedure on resolution to increase capital.
15. Procedure on resolution to reduce capital.
16. New capital to be subject to provisions of Act.

CHAPTER IV.—FORFEITURE OF STOCK AND SHARES.

17. Powers in regard to proprietors or shareholders indebted to Bank.

CHAPTER V.—CERTIFICATES, TRANSFER AND TRANSMISSION OF SHARES AND STOCK.

18. Certificates for shares.
Receipts for stock.
Fees for certificates and receipts.
Certificates and receipts to be evidence.
19. Stock and shares to be moveable property.
20. Form of transfer to be approved by Board.
Board may require evidence of transmission.
Transferor to remain proprietor till transfer registered.
21. Power to close transfer-books.
22. Corporation to consist of registered proprietors or shareholders only.
Notice of trusts.
Shares vested in several holders.
23. Transmission of stock or shares of deceased proprietors or shareholders.
Transmission on insolvency or marriage.

CHAPTER VI.—DIRECTORS.

24. Board.
Quorum.
25. Present directors to be continued.
26. Two directors to go out by rotation annually.
27. Qualification of directors.
Disqualification of directors.
Co-partners of same firm not to serve as directors at same time.
Power to remove directors.

SECTION.

28. Directors to choose president and vice-president.
    Chairman.
    Casting vote.
29. Vacancies among directors how filled up.
30. Acts of directors valid notwithstanding subsequent discovery of disqualification.
31. Indemnity of directors.

CHAPTER VII.—OFFICERS OF THE BANK.

32. Appointment, salaries, suspension and removal of officers.
33. Accounts, receipts and documents of Bank, by whom to be signed.
34. Officers forbidden to engage in other commercial business.
35. Security from officers.

CHAPTER VIII.—BUSINESS.

36. Business which Banks may transact.
37. Business which Banks may not transact.
    Overdrawing.
38. Sums payable by or to Government to be payable at Banks.
39. Presentment of promissory notes at Banks.
40. Place of business.
41. Acquisition of business-premises.
42. Establishment of branches and agencies.
    Proviso.

CHAPTER IX.—ACCOUNTS AND DIVIDENDS.

43. Books to be balanced twice a year.
44. Dividends to be determined half-yearly.
45. Reserve-fund.
46. Application of reserve-fund.

CHAPTER X.—AUDIT.

47. Election of auditors.
    Who may be auditors.
    Auditors re-eligible.
    Auditors' tenure of office.
    Supply of casual vacancy in office.
48. Rights and duties of auditors.

CHAPTER XI.—Meetings.

Section.
49. Annual general meeting.
50. Special meetings.
51. Quorum.
52. Decision by majority of votes.
Persons not allowed to vote.
Shareholders in arrear as to calls.
53. Power to declare resolution carried by show of hands.
54. Poll to be taken, if demanded.
55. Proceedings and resolutions at meetings to be binding.
56. Scale of votes.
57. Proxies of proprietors or shareholders.
Existing proxies.
58. Voting by lunatic and minor shareholders.

CHAPTER XII.—Notices.

59. Service of notices by Bank.
60. Notices by shareholders.
61. Shareholder bound by notices to previous holders.
62. Service of notices good, notwithstanding shareholder's death.

CHAPTER XIII.—Bye-Laws.

63. Power of directors to make bye-laws.
Proviso.

CHAPTER XIV.—Miscellaneous.

64. Power to institute and compromise suits.
65. Evidence in legal proceedings against shareholders.
66. Modification of 33 Geo. III, Sess. 2, Cap. 52.
67. Power to wind up Bank under Indian Companies Act.
68. Sale to Banks of Bengal and Madras of Government shares therein.
Purchase and cancellation by directors of 62½ shares in present Bank of Madras.
Confirmation of agreements with Government.
Confirmation of purchase of the 62½ shares.
Sale by directors of 400 shares in Bank of Bengal.
Cancellation of certain shares.

Schedule.

ACT No. XI of 1876.

Received the Governor General's assent on the 11*th April* 1876.

An Act for constituting and regulating the Banks of Bengal, Madras and Bombay.

Preamble.

WHEREAS the Bank of Bengal is now constituted and regulated by Act No. IV of 1862, as amended by Acts No. VI of 1862 and No. XIX of 1870, and its capital consists of twenty-two millions of rupees, in shares of one thousand rupees each;

And whereas the Bank of Madras is now constituted and regulated by Madras Act No. VI of 1866, as amended by Madras Act No. I of 1871, and its capital consists of five millions six hundred and twenty-five thousand rupees, in shares of one thousand rupees each;

And whereas a Bank named the Bank of Bombay was constituted and regulated by Bombay Act No. X of 1863, as amended by Bombay Acts No. XV of 1866 and No. I of 1867; but such Bank has been wound up and the said Bombay Acts are now obsolete and should be expressly repealed;

And whereas on the tenth day of December 1867, a joint-stock Banking Company was registered and incorporated at Bombay, by virtue of the Indian Companies Act, 1866, under the name of "The New Bank of Bombay, Limited," with a Memorandum of Association and Articles of Association then also registered, and prescribing the constitution and regulations for the management of such Bank;

And whereas the Government of India now holds two thousand two hundred shares in the said Bank of Bengal, and five hundred and sixty-two and a half shares in the said Bank of Madras; and, under the provisions of the said Act No. IV of 1862 and Madras Act No. VI of 1866, is bound to appoint, and has power to remove, certain of the directors of the said Banks of Bengal and Madras respectively, and has also power to give a proxy to any person whom the Governor General in Council may appoint, to attend and vote at any meeting of the proprietors of each of the same Banks;

And whereas the Government of India has determined to sell its said shares and to surrender its said powers; and it is expedient to relieve the said Government from the said duty of appointing directors, and to repeal the said enactments and to consolidate such of them as relate to the said Banks of Bengal and Madras respectively with the changes rendered necessary or desirable by such sale, surrender and relief;

And whereas it is expedient to reduce the said capital of the Bank of Bengal by two millions of rupees and to reduce the said capital of the Bank of Madras by six hundred and twenty-five thousand rupees, and to divide the capital so reduced of each of the same Banks into shares of five hundred rupees each;

And whereas it is expedient that the said New Bank of Bombay, Limited, should be reconstituted and regulated, in manner in this Act provided, under the name of the Bank of Bombay;

It is hereby enacted as follows:—

CHAPTER I.—PRELIMINARY.

1. This Act may be called "The Presidency Banks Act, 1876;" *Short title.*

And it shall come into force on the first day of May 1876. *Commencement.*

2. On and from that day the Statute specified in the first part of the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof, and the Acts specified in the second, third and fourth parts of the same schedule shall be wholly repealed. But all bye-laws and regulations made under any such Act, and then in force, shall, so far as they are consistent with this Act, be deemed to have been made hereunder. *Repeal of enactments.*

The references made in the Indian Companies Act, 1866, to the Bank of Bengal, the Bank of Madras and the Bank of Bombay, shall be deemed to be made respectively to the Bank of Bengal, the Bank of Madras and the Bank of Bombay as constituted by this Act. *References in Act X of 1866.*

3. In this Act, unless there be something repugnant in the subject or context— *Interpretation-clause.*

"The Bank" means the Bank of Bengal, the Bank of Madras, or the Bank of Bombay (as the case may be), as constituted and regulated by this Act: *"The Bank."*

"Capital" means the capital for the time being of the Bank: *"Capital."*

"Shares" means the shares for the time being of the capital, and includes also half shares: *"Shares."*

"Capital stock" means that part of the capital into which wholly paid-up shares have been converted or consolidated, and in the case of the Bank of Bengal and the Bank of Madras includes the present consolidated stock of such Banks respectively: *"Capital stock."*

"Registered" means registered in the books of the Bank: *"Registered."*

"Shareholders" means the duly registered holders from time to time of the shares of the Bank: *"Shareholders."*

"Proprietors."

"Proprietors" means the duly registered holders from time to time of the capital stock of the Bank:

"Directors."

"Directors" means the directors assembled for the purpose of performing any of their functions under this Act:

"Board."

"Board" means a meeting of the directors duly called and constituted or, as the case may be, the directors assembled at a Board:

"Auditors." and "Secretary."

"Auditors" and "Secretary" mean those respective officers from time to time of the Bank, and "Secretary" includes a Secretary and Treasurer and a Deputy Secretary:

"General meeting."

"General meeting" means the meeting of proprietors or shareholders or both, held annually under section forty-nine; it includes any adjourned holding thereof:

"Special meeting."

"Special meeting" means a meeting of proprietors or shareholders or both, held for the transaction of some particular business specified in the notice convening the meeting; it includes any adjourned holding thereof:

"Special resolution."

"Special resolution" means a resolution passed at a special meeting:

"Office."

"Office" means the office or principal office for the time being of the Bank:

"Goods."

"Goods" includes also bullion, wares and merchandise:

"Presidency of Fort St. George."

"Presidency of Fort St. George" means the territories now under the government of the Governor of Fort St. George in Council:

"Presidency of Bombay."

"Presidency of Bombay" means the territories now under the government of the Governor of Bombay in Council; and

"Presidency of Fort William."

"Presidency of Fort William" means all the territories in British India other than the Presidency of Fort St. George and the Presidency of Bombay.

CHAPTER II.—Constitution.

Proprietors and shareholders of present Banks to form bodies corporate.

4. The several persons who, when this Act comes into force, are respectively the proprietors and shareholders of the said Bank of Bengal, Bank of Madras and New Bank of Bombay, Limited (hereinafter called the present Banks), or who shall, at any time thereafter, by virtue of this or any other Act regulating the Bank, become proprietors or shareholders, shall continue and constitute and be bodies corporate with perpetual succession, under the name,

in the case of the proprietors and shareholders of the said Bank of Bengal—of "The Bank of Bengal,"

in the case of the proprietors and shareholders of the said Bank of Madras—of "The Bank of Madras,"

and in the case of the shareholders and proprietors of the said New Bank of Bombay, Limited—of "The Bank of Bombay,"

and shall respectively possess and enjoy all the rights, powers and immunities incident by law to a corporation aggregate; subject, nevertheless, to the provisions of this or any other Act for the time being in force regulating the Bank,

and, in particular, the proprietors of the Bank shall not be liable for its debts and engagements, and the shareholders of the Bank shall be so liable only to the extent of their shares not fully paid up.

with limited liability.

The several persons who are then proprietors and shareholders of each of the present Banks of Bengal and Madras, or the executors or administrators of such proprietors and shareholders respectively, shall be entitled to be registered as proprietors and holders of a like quantity of stock and a proportionate number of shares, as is or are then registered in their names respectively, or in the names of the persons whom they represent respectively in the books of each of the said present Banks of Bengal and Madras, two shares in the Bank of Bengal as constituted by this Act being deemed equivalent to one share in the present Bank of Bengal, and two shares in the Bank of Madras as constituted by this Act being deemed equivalent to one share in the present Bank of Madras,

Proprietors and shareholders of present Banks to be proprietors and shareholders of new Banks.

and the several persons who are then shareholders of the said New Bank of Bombay, Limited, or the executors or administrators of such shareholders respectively, shall be registered as holders of a like number of shares of the Bank of Bombay as constituted by this Act as are then registered in their names respectively, or in the names of the persons whom they represent respectively in the books of the said New Bank of Bombay, Limited; and all such shares upon which the sum of five hundred rupees has then been paid, shall be deemed to have been fully paid up.

5. All the property, moveable and immoveable, and all the securities, claims and demands, and the benefits of all agreements, of or to which the present Banks are or shall be respectively possessed or entitled, or which shall, or but for this Act might be, on the said first day of May 1876, or might at any time thereafter have been, due to, or claimed by, the said Banks respectively shall, by virtue of this Act, become vested in and devolve upon, and may be claimed, made and recovered by,

Property of present Banks to vest respectively in new Banks

in the case of the said Bank of Bengal,—the Bank of Bengal as constituted by this Act,

in the case of the said Bank of Madras,—the Bank of Madras as constituted by this Act,

and in the case of the said New Bank of Bombay, Limited,—the Bank of Bombay as constituted by this Act ;

Claims against present Banks.

and the Bank shall, from and after the said first day of May 1876, be liable and subject to all debts, claims and demands which shall then be due or claimable from, or which, but for this Act, might be then, or might at any time thereafter, have been due or claimable from or made against the said Bank of Bengal, Bank of Madras or New Bank of Bombay, Limited, as the case may be,

and no suit or legal proceeding then pending by or against the said Bank of Bengal, Bank of Madras or New Bank of Bombay, Limited, shall cease, or abate, or become defective, in consequence of this Act, but may be continued and prosecuted by or against the Bank.

New Bank of Bombay, Limited, wound-up.

6. The transfer of the assets and liabilities of the said New Bank of Bombay, Limited, to the Bank of Bombay by virtue of this Act, shall operate as a winding-up and liquidation of the said New Bank of Bombay, Limited.

No shareholder or creditor of the said New Bank of Bombay, Limited, shall take any proceedings for winding-up the same under the Indian Companies Act, 1866, or any Act for the time being in force relating to the winding-up of Companies ;

and no person shall make, assert or take any claims, demands or proceedings against the same Bank, or the directors or officers thereof, except so far as may be necessary for enforcing the provisions of this or any other Act for the time being in force regulating the Bank of Bombay.

Banks to sue and be sued in corporate name, and use corporate seals ; and may hold and transfer property.

7. The Bank shall sue and be sued by its said corporate name ;

and shall use such corporate seal as the directors from time to time appoint ;

and may as such body corporate acquire and hold, either absolutely or conditionally, for a term or in perpetuity, any property whatsoever, moveable or immoveable, and transfer, assign and convey the same.

Seal how used.

8. The seal of the Bank shall not be affixed to any instrument except in the presence of at least two directors and of the Secretary and Treasurer, who shall sign their names to the instrument in token of their presence, and such signing shall be independent of the signing of any person who may sign the instrument as a witness.

Unless so signed as aforesaid, such instrument shall be of no validity.

Contracts how made.

9. Contracts may be made on behalf of the Bank as follows :—

(*a*) any contract, which, if made between private persons, would be by law required to be in writing, and, if made according to English law, to be under seal, may be made on behalf of the Bank in writing under its cor-

porate seal, and such contract may be in the same manner varied or discharged:

(*b*) any contract, which, if made between private persons, would be by law required to be in writing signed by the parties to be charged therewith, may be made on behalf of the Bank by writing signed by any person acting under the express or implied authority of the Bank, and such contract may in the same manner be varied and discharged:

(*c*) any contract, which, if made between private persons, would by law be valid, although made by parol only and not reduced into writing, may be made by parol on behalf of the Bank by any person acting under the express or implied authority of the Bank, and such contract may in the same manner be varied and discharged;

and all contracts made according to the provisions herein contained shall be effectual in law and shall be binding upon the Bank and other parties thereto and their legal representatives.

CHAPTER III.—Capital.

10. The capital of the Bank of Bengal shall consist of twenty millions of rupees in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided, to thirty millions of rupees. Capital of Bank of Bengal.

The capital of the Bank of Madras shall consist of five millions of rupees, in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided, to twelve millions of rupees. Capital of Bank of Madras.

The capital of the Bank of Bombay shall consist of ten millions of rupees in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided, to twenty millions of rupees. Capital of Bank of Bombay.

11. The capital of the said New Bank of Bombay, Limited, already created, shall, on the first day of May 1876, constitute the capital of the Bank of Bombay, subject to be increased as aforesaid. Capital of New Bank of Bombay, Limited, to be capital of Bank of Bombay.

12. Any shareholder may from time to time surrender his wholly paid-up shares, or any of them, to the directors, and demand and receive from the Bank, in lieu thereof, capital stock to the amount represented by the shares so surrendered, Surrender of paid-up shares for stock.

Surrender of stock for shares.

and any proprietor may from time to time surrender his stock, or any portion thereof, to the directors, and demand and receive from the Bank, in lieu thereof, shares to the like amount, or as near thereto as practicable.

Power to increase or reduce capital.

13. The proprietors and shareholders of the Bank may from time to time by special resolution and with the previous sanction of the Governor General in Council increase or reduce the capital of the Bank:

Provided that no such special resolution shall be deemed to have been passed, unless at least one-third in number of the proprietors or shareholders holding at least one-half of the paid-up capital of the Bank for the time being, be present in person or by proxy, and a majority poll by open voting in favour of the said resolution.

Procedure on resolution to increase capital.

14. When any such special resolution to increase the capital has been passed, the directors may, subject to the provisions of this or any other Act for the time being in force regulating such Bank, and to the special direction (if any) given in reference thereto by the meeting at which such resolution has been passed,

(*a*) make such orders as they think fit for the opening of subscriptions towards such increase of capital by the proprietors and shareholders;

(*b*) allow to the proprietors and shareholders such period to fill up the subscription as to the directors seems fit;

(*c*) prescribe the manner in which the proprietors and shareholders shall subscribe and pay into the Bank the proportions of new capital which they may respectively desire to subscribe; and

(*d*) make such orders as the directors think fit for the disposal and allotment of the amount of new capital that may not be subscribed for and paid up in manner aforesaid:

Provided that the capital shall not exceed, in the case of the Bank of Bengal, thirty millions of rupees, in the case of the Bank of Madras, twelve millions of rupees, and in the case of the Bank of Bombay, twenty millions of rupees.

Procedure on resolution to reduce capital.

15. When any such special resolution to reduce the capital has been passed, the directors may (subject as aforesaid) prescribe the manner in which the reduction shall be carried into effect.

New capital to be subject to provisions of Act.

16. Any new capital created under the provisions of section thirteen shall be subject to the provisions of this or any other Act regulating the Bank in force for the time being.

CHAPTER IV.—Forfeiture of Stock and Shares.

Powers in regard to proprietors or shareholders indebted to Bank.

17. If any proprietor or shareholder is indebted to the Bank, the Bank may withhold payment of the dividends on the stock or shares of such proprietor or shareholder not being registered as held in trust, or as executor or administrator, and apply them in payment of the debt;

and the Bank may refuse to register the transfer of any such stock or shares until payment of such debt;

and after demand and default of payment, and notice in that behalf given to such proprietor or shareholder, or his constituted agent, or by public advertisement in the local official gazette, if the debt remain unpaid for the space of three months after such notice, the Bank may advertise in the local official gazette such stock or shares for sale on a day not less than fifteen days from the publication of such advertisement;

and may, on such day, sell by public auction, and subject to such conditions, if any, as the Bank thinks fit, such stock or shares, or so much or so many thereof as may be necessary, and apply the proceeds thereof in or towards payment of the said debt, with interest, from the day appointed for the payment of such debt to the time of actual payment, at such rate as may have been agreed upon, or, in the absence of such agreement, at the highest rate current for advances by way of local discounts by the Bank;

and shall pay over the surplus, if any, to such proprietor or shareholder or to his lawful representative.

CHAPTER V.—Certificates, Transfer and Transmission of Shares and Stock.

Certificates for shares.

18. Every shareholder shall be entitled to a certificate, under the corporate seal of the Bank, and signed by two directors and the Secretary and Treasurer, specifying the shares held by him, and in the case of shares which are not wholly paid up, the amount paid thereon,

and any holder of more than one half share may, at his option, demand a certificate for each such half share, or one or more certificates for all or any of such half shares, and such certificate or certificates shall be delivered to him accordingly: Provided that the number of such certificates shall in no case exceed the number of half shares in respect of which they are so delivered.

Receipts for stock.

Every proprietor of capital stock shall be entitled to a receipt signed by two directors and the Secretary and Treasurer, and specifying the amount of stock held by him, and any such proprietor may, at his option, demand one

receipt for the whole of the stock, or separate receipts for any portions of the stock, so held by him, and such receipt or receipts shall be delivered to him accordingly : Provided that no receipt shall be delivered for a portion of stock less than two hundred and fifty rupees.

Fees for certificates and receipts.

For every certificate and receipt delivered under this section there shall be paid such fee as may for the time being be prescribed under section sixty-three, clause (*k*) : Provided that no fee shall be payable for certificates or receipts delivered to the persons referred to in section four for shares in or stock of the Bank.

Certificates and receipts to be evidence.

Every such certificate and receipt shall be *primâ facie* evidence of the title of the shareholder or proprietor to the shares or stock therein specified.

Stock and shares to be moveable property.

19. The stock and shares of every proprietor and shareholder shall be moveable property, capable of being transferred in manner provided by the regulations contained herein, or in any other Act regulating the Bank for the time being in force, and shall not be of the nature of immoveable property ; and each share shall be distinguished by its appropriate number.

Form of transfer to be approved by Board.

20. Every transfer of stock or shares may be by endorsement on the certificate or in such other form as the Board from time to time may approve, and shall be presented to the Bank accompanied by such evidence as the Board may require to prove the title of the transferors.

Board may require evidence of transmission.

Every such transfer shall be verified in such manner as the Board require, and the Board may refuse to register any such transfer until the same be so verified, and, in the case of shares not fully paid up, unless the transferee is approved by the Board.

Transferor to remain proprietor till transfer registered.

The transferor shall be deemed to remain the proprietor or holder of the stock or shares transferred until the name of the transferee is registered in respect thereof.

Power to close transfer-books.

21. The directors may from to time close the register and transfer-books of the Bank for any period or periods not exceeding in the whole thirty days in any twelve consecutive months.

Corporation to consist of registered proprietors or shareholders only.

22. The proprietors and shareholders for the time being, and no other persons, shall be members respectively of the bodies corporate hereby constituted,

Notice of trusts.

and, except for the purpose of excluding the provisions of section seventeen, the Bank shall not be bound or affected by notice of any trust to which any stock or share may be subject in the hands of the proprietor or holder thereof ;

and when any stock or share is vested in more than one proprietor or holder, such proprietors or shareholders shall, as between themselves and the Bank, be considered as joint owners with benefit of survivorship :

Shares vested in several holders.

Provided that, as regards voting at meetings, service of notices and receipt of dividend, the person whose name stands first in the register as one of the proprietors or holders of such stock or shares shall be deemed the sole proprietor or holder thereof.

23. When by the death of any proprietor or shareholder his stock or shares shall devolve on his legal representative, the Bank shall not be bound to recognize any legal representative of such proprietor or shareholder other than a person who has taken out from a Court having jurisdiction in this behalf probate of the will or letters of administration to the estate of the deceased.

Transmission of stock or shares of deceased proprietors or shareholders.

Any person becoming entitled to stock or shares in consequence of the insolvency or bankruptcy of any proprietor or shareholder, or in consequence of the marriage of any female proprietor or shareholder, may be registered as a proprietor or shareholder upon such evidence being produced as the directors may from time to time require.

Transmission on insolvency or marriage.

CHAPTER VI.—Directors.

24. The business of the Bank shall be managed by the Board, which shall in the first instance consist of six directors, and may subsequently consist of such number, not less than six, and not more than nine, as may be fixed by a special resolution.

Board.

Such directors shall be selected by vote of a general or special meeting.

Three of the directors shall form a quorum for the transaction of business.

Quorum.

25. The persons who, on the first day of May 1876, are respectively directors of the Bank of Bengal, the Bank of Madras, and the New Bank of Bombay, Limited, shall be respectively directors of the Bank of Bengal, the Bank of Madras, and the Bank of Bombay, as constituted by this Act, subject to removal as hereinafter provided and to the other provisions herein contained.

Present directors to be continued.

26. The two directors who have been longest in office shall go out of office at the general meeting.

Two directors to go out by rotation annually.

Any director so retiring may be re-elected at such meeting; and if any question arise as to which of the directors who have been the same time in office shall retire, such question shall be decided by the directors by ballot.

27. *Clause* 1.—No person shall be qualified to serve as a director of a Bank who is not a proprietor or holder in his own right of unencumbered

Qualification of directors

stock or shares of such Bank, to the nominal amount of ten thousand rupees at the least.

Disqualification of directors.

Clause 2.—No person shall be qualified to serve as a director—

If he holds the office of director, provisional director, promoter, agent or manager of any other joint stock Bank established, or having a branch or agency, in British India, or advertised as about to be established, or to have a branch or agency, in British India; or

If he is a salaried officer of Government not specially authorized by the Governor General in Council to serve as a director;

And the office of director shall be vacated—

If the person holding it resigns his office or dies;

If he accepts or holds any other office of profit under the Bank;

If he becomes insolvent or bankrupt, or compounds with his creditors;

If he is declared lunatic, or becomes of unsound mind;

If he is absent from the Board for more than three consecutive months;

If he ceases to hold in his own right the amount or number of unencumbered stock or shares required to qualify him for the office.

Co-partners of same firm not to serve as directors at same time.

Clause 3.—No two persons who are partners of the same mercantile firm, or one of whom is the general agent of, or holds a power of procuration from, the other, or from a mercantile firm of which the other is a partner, shall be eligible or qualified to serve as directors at the same time.

Power to remove directors.

Clause 4.—The proprietors or shareholders may, by a special resolution passed by the votes of proprietors or shareholders holding in the aggregate not less than one-half of the capital, remove any director before the expiration of his period of office, and appoint, in his stead, a qualified person, who shall in all respects stand in his place.

Directors to choose president and vice-president.

28. At the first meeting of the directors in every year, they shall choose a president and vice-president from among themselves, and whenever the office of president or vice-president becomes vacant, they shall, at their next meeting, choose a successor for the remainder of the current year.

Chairman.

Casting vote.

The president, or in his absence the vice-president, shall be chairman at all meetings whether of directors or of proprietors or shareholders, or of proprietors and shareholders, and shall have an additional or casting vote in all cases of an equal division of votes: Provided that if both the president and vice-president be absent at any meeting, the directors present shall elect a chairman for such meeting, from among themselves, and such chairman shall, in case of an equal division of votes, have an additional or casting vote.

Vacancies among

29. The Board shall have power at any time, and from time to time, to

supply any vacancies in their number arising from the death, resignation, or disqualification under section twenty-seven, of any director.

directors how filled up.

Any director so appointed shall, for the purposes of section twenty-six, be considered to have held office from the date on which the director in whose place he is appointed was elected, or (where such director was appointed under this section) from the date on which his mediate or immediate predecessor was elected.

30. All acts done by any person acting in good faith as a director shall be as valid as if he was a director, notwithstanding it be afterwards discovered that there was some defect in his appointment or qualification.

Acts of directors valid notwithstanding subsequent discovery of disqualification.

31. Every director shall be indemnified by the Bank against all losses and expenses incurred by him in or about the discharge of his duties, except such as happen from his own wilful act or default.

Indemnity of directors.

No director shall be responsible for any other director or for any officer, clerk or servant of the Bank, or for any loss or expense happening to the Bank by the insufficiency or deficiency of value of, or title to, any property or security acquired or taken on behalf of the Bank, or by the insolvency, bankruptcy or wrongful act of any customer or debtor of the Bank, or by anything done in the execution of the duties of his office or in relation thereto, or otherwise than for his own wilful act or default.

CHAPTER VII.—Officers of the Bank.

32. The directors shall have power—

Appointment, salaries, suspension and removal of officers.

to appoint such officers, clerks and servants as may be necessary to conduct the business of the Bank,

to grant salaries, pensions and other emoluments to such officers, clerks and servants, and

to suspend or remove any officer, clerk or servant of the Bank.

33. The Secretary and such other officers of the Bank as the directors may by writing notify in the local official Gazette (and, in the case of the Bank of Bengal, also in the *Gazette of India*) are hereby severally empowered for and on behalf of the Bank to endorse and transfer promissory notes, stock-receipts, stock, debentures, shares, securities and documents of title to goods, standing in the name of, or held by, the Bank,

Accounts, receipts and documents of Bank by whom to be signed.

and to draw, accept and endorse bills of exchange, bank post-bills, and letters of credit, in the current and authorized business of the Bank,

and to sign all other accounts, receipts and documents connected with such business.

Officers forbidden to engage in other commercial business.

34. No Secretary, Inspector, Manager, or Accountant in the service of the Bank,

and no Khazánchi, Cashier or Shroff in the service of the Bank at the principal office,

and, without the previous sanction of the Board, no Agent, Khazánchi, Cashier or Shroff at any branch or agency of the Bank,

shall engage in any other banking or commercial business, either on his own account or as agent for any other person or persons, or shall act as broker or agent for the sale or purchase of Government or other securities.

Security from officers.

35. Every person appointed to hold, or act in, any one or more of the said offices, and every other officer from whom the directors may from time to time think fit to require it, shall give security to the directors, for the faithful discharge of his duty to the satisfaction of the directors, in such amount and in such manner as they think proper.

The security to be given as aforesaid by the person holding or acting in the office of Secretary shall not be in a less amount than fifty thousand rupees.

CHAPTER VIII.—Business.

Business which Banks may transact.

36. The Bank is authorized to carry on and transact the several kinds of business hereinafter specified (that is to say) :

(*a*) the advancing and lending money, and opening cash-credits, upon the security of—

(1) promissory notes, debentures, stock and other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland;

(2) bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India;

(3) stock or debentures of, or shares in, Railway or other Companies, the interest whereon shall have been guaranteed by the Secretary of State for India in Council;

(4) debentures or other securities for money issued by, or on behalf of, any municipal body under the authority of any Act of a legislature established in British India;

(5) bullion or other goods which, or the documents of title to which, are deposited with, or assigned to, the Bank as security for such advances, loans or credits; and

(6) accepted bills of exchange and promissory notes indorsed by the payees:

Provided that such advances and loans may be made, if the directors think fit, to the Secretary of State for India in Council, without any specific security;

(*b*) the selling and realization of the proceeds of sale of any such promissory notes, debentures, stock-receipts, bonds, annuities, stock, shares, securities, bullion or goods which, or the documents of title to which, have been deposited with, or assigned to, the Bank as security for such advances, loans or credits, or which are held by the Bank, or over which the Bank is entitled to any lien or charge in respect of any such loan or advance or credit or any debt or claim of the Bank, and which have not been redeemed in due time in accordance with the terms and conditions (if any) of such deposit or assignment;

(*c*) the drawing, discounting, buying and selling of bills of exchange and other negotiable securities payable in India, or (in the case of the Bank of Madras) in Ceylon;

(*d*) the investing of the funds of the Bank upon any of the securities specified in paragraph (*a*) of this section, clauses (1), (2), (3) and (4), and converting the same into money when required,

and from time to time altering, converting and transposing such investments for or into others of the investments above specified;

(*e*) the making, issuing and circulating of bank-post-bills and letters of credit made payable in India, or (in the case of the Bank of Madras) in Ceylon, to order, or otherwise than to the bearer on demand;

(*f*) the buying and selling of gold and silver, whether coined or uncoined;

(*g*) the receiving of deposits and keeping cash-accounts on such terms as may be agreed on;

(*h*) the acceptance of the charge and management of plate, jewels, title-deeds or other valuable goods on such terms as may be agreed upon;

(*i*) the selling and realising of all property whether moveable or immoveable, which may in any way come into the possession of the Bank in satisfaction or part satisfaction of any of its claims;

(*j*) The transacting of pecuniary agency business on commission;

(*k*) the acting as agent on commission in the transaction of the following kinds of business (namely):—

(1) the buying, selling, transferring and taking charge of any securities or any shares in any public Company;

(2) the receiving of the proceeds, whether principal, interest or dividends, of any securities or shares;

(3) the remittance of such proceeds at the risk of the principal by public or private bills of exchange, payable either in India or elsewhere;

(*l*) the drawing of bills of exchange, and the granting of letters of credit, payable out of India, for the use of principals for the purpose of the remittances mentioned in the last preceding clause of this section;

(*m*) the buying, for the purpose of meeting such bills or letters of credit, of bills of exchange payable out of India, at any usance not exceeding six months;

(*n*) and, generally, the doing of all such matters and things as may be incidental or subsidiary to the transacting of the various kinds of business hereinbefore specified.

(*o*) It shall also be lawful for the Bank under any arrangement or agreement with the Secretary of State for India in Council—

(1) to act as banker for, and to pay, receive, collect and remit money, bullion and securities on behalf of the Government;

(2) to undertake and transact any other business which the Government may from time to time entrust to the Bank.

And the directors shall have power from time to time to arrange and settle with the Governor General in Council the terms of remuneration on which such business shall be undertaken by the Bank, and also as to the examination and audit from time to time of the accounts and affairs of the Bank by or on behalf of the Governor General in Council.

Business which Banks may not transact.

37. The directors shall not transact any kind of banking business other than those above specified, and in particular they shall not make any loan or advance—

(*a*) for a longer period than three months; or

(*b*) upon the security of stock or shares of the Bank of which they are directors; or

(*c*) upon mortgage, or in any other manner upon the security, of any immoveable property, or the documents of title relating thereto.

(*d*) Nor shall they lend or advance, by discount of bills or otherwise, to any individual or partnership firm (except upon the security mentioned in section thirty-six, paragraph (*a*), numbers (1) to (5) inclusive), any sums of money exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force.

(*e*) Nor shall they discount or buy, or advance and lend, or open cash-credits, on the security of any negotiable instrument of any individual or

partnership firm, payable in the town or at the place where it is presented for discount, which does not carry on it the several responsibilities of at least two persons or firms unconnected with each other in general partnership.

(*f*) Nor shall they discount or buy, or advance and lend, or open cash-credits, on the security of any negotiable security having at the date of the proposed transaction a longer period to run than three months, or if drawn after sight, drawn for a longer period than three months: Provided that, in the case of the Bank of Madras, the directors may discount negotiable securities payable in Ceylon having at the date of the transaction a period to run not exceeding four months.

Nothing contained in this Act shall be deemed to prevent the directors from allowing any person who keeps an account with the Bank from overdrawing such account, without security, to the extent of sums not exceeding at any one time two thousand rupees in the whole. Overdrawing.

38. Until the expiration of at least fourteen days after notice has been given by notification of the Governor General in Council published, in the case of the Bank of Bengal, in the *Gazette of India* and the *Calcutta Gazette*, and in the cases of the Bank of Madras and the Bank of Bombay, in the local official Gazette, that the Bank will no longer act as banker for, or pay, receive, collect or remit money, bullion and securities on behalf of the Government, Sums payable by or to Government to be payable at Banks.

all sums payable by or to the Secretary of State for India in Council, or by or to the Governor General in Council, or the Government of Bengal or the Governor of Fort St. George in Council or the Governor of Bombay in Council, on behalf of the Secretary of State for India in Council, at the General Treasury of Fort William in Bengal, or at the General Treasury at Madras, or at the General Treasury at Bombay,

shall be payable—

in the case of the Secretary of State for India in Council, or the Governor General in Council—at the office of the Bank of Bengal, the Bank of Madras, or the Bank of Bombay, as the case may be,

in the case of the Government of Bengal—at the office of the Bank of Bengal;

in the case of the Governor of Fort St. George in Council—at the office of the Bank of Madras; and

in the case of the Governor of Bombay in Council—at the office of the Bank of Bombay.

39. Whenever presentment of any promissory note, bond or other security for payment or any other purpose at any of the said General Treasuries would Presentment of promissory notes at Banks.

heretofore have been necessary or sufficient, presentment for such purpose shall be necessary or sufficient (as the case may be) until the expiration of fourteen days after the giving of the notice mentioned in section thirty-eight—

in the case of the General Treasury of Fort William—at the office of the Bank of Bengal;

in the case of the General Treasury at Madras—at the office of the Bank of Madras; and

in the case of the General Treasury at Bombay—at the office of the Bank of Bombay.

Place of business.

40. The office of the Bank of Bengal shall be at Calcutta, that of the Bank of Madras shall be at Madras, and that of the Bank of Bombay shall be in the Island of Bombay;

and the business of the Bank shall be carried on at its office, and at such other place or places in India as the Board may deem advisable, under the provisions of section forty-two.

Acquisition of business-premises.

41. For the purpose of providing offices and places in and at which to carry on and manage the business of the Bank, and proper residences for its agents, the directors may—

(*a*) acquire any interest in immoveable property, and

(*b*) sell, buy in, re-sell, exchange, let, furnish, repair, insure against fire and otherwise deal with all or any part of the same as they may consider most conducive to the interests of the Bank.

Establishment of branches and agencies.

42. It shall be lawful for the directors to maintain as branches or agencies of the Bank, any branches or agencies of the present Banks, which may be in existence on the first day of May 1876,

and, from time to time, to establish branches or agencies at such places within the Presidency in which the Bank is situate as they deem advantageous to the interest of the Bank,

and, with the previous consent of the Governor General in Council, and subject to such restrictions as to the business to be transacted as he thinks fit in each case to impose (such consent and restrictions being notified in the *Gazette of India*), to establish branches or agencies at such places outside the Presidency in which the Bank is situate, as the directors deem advantageous for the interests of the Bank:

Proviso.

Provided that no agency of the Bank now or hereafter established in Bombay, Calcutta or Madras shall advance, or lend money, or open cash-credits on securities, or receive deposits and keep cash-accounts, or discount bills of exchange drawn and payable in the Presidency in which it is so established,

or shall act as agent on commission, or transact any business except as agent of its principal Bank, or any of its branches or other agencies.

The directors may discontinue any branch or agency maintained or established under this section.

CHAPTER IX.—Accounts and Dividends.

43. The directors shall cause the books of the Bank to be balanced on every thirty-first day of December and every thirtieth day of June. Books to be balanced twice a year.

A statement of the balance at every such period, signed by a majority of the directors, shall be forthwith sent to a Secretary to the Government of India, and in the cases of the Bank of Madras and the Bank of Bombay, also to a Secretary to the Local Government.

The Governor General in Council in the case of each of the said Banks, and the Local Government in the case of the Bank of Madras and the Bank of Bombay, shall (so long as any such arrangement with the Government as aforesaid, which has already been, or shall hereafter be, entered into remains in force) at all times be entitled to require of the directors any information touching the affairs of the Bank and the production of any document of the Bank,

and in the case of each of the said Banks, the Governor General in Council may require the publication of such statements of its assets and liabilities at such intervals and in such form and manner as the Governor General in Council thinks fit.

Every requisition under this section shall be signified in writing under the hand of a Secretary to the Government of India or to the Local Government (as the case may be), and the directors shall comply with every such requisition.

44. An account of the profits of the Bank during the previous half-year shall be taken on or immediately after every thirty-first day of December and every thirtieth day of June, Dividends to be determined half-yearly.

and a dividend shall be made as soon thereafter as conveniently may be,

and the amount of such dividend shall be determined by the directors, subject to the provisions of section forty-five.

No unpaid dividend shall bear interest as against the Bank.

45. The directors, before declaring any dividend, may set aside out of the profits of the Bank such a sum as they think proper as a reserve-fund, and invest the same upon any of the securities specified in section thirty-six, paragraph (*a*), clauses (1), (2), (3) and (4). Reserve-fund.

Application of reserve-fund.

46. The directors may from time to time apply such portion as they think fit of the reserve-fund to meet contingencies, or for equalizing dividends, or for any other purposes of the Bank, which they from time to time deem expedient.

CHAPTER X.—AUDIT.

Election of auditors.

47. Two auditors shall be elected and their remuneration fixed at the annual general meeting.

Who may be auditors.

The auditors may be proprietors or shareholders; but no director or other officer of the Bank is eligible during his continuance in office.

Auditors re-eligible.

Any auditor shall be re-eligible on his quitting office.

Auditors' tenure of office.

The persons who shall be auditors on the first day of May 1876, and all auditors elected under this section, shall severally be and continue to act as auditors until the first general meeting after their respective elections:

Supply of casual vacancy in office.

Provided that if any casual vacancy occurs in the office of any auditor, the directors shall forthwith call a special meeting for the purpose of supplying the same.

Rights and duties of auditors.

48. Every auditor shall be supplied with a copy of the half-yearly balance-sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.

Every auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable times have access to the books, accounts and other documents of the Bank, and may (at the expense of the Bank) employ accountants or other persons to assist him in investigating such accounts, and may, in relation to such accounts, examine the directors or any other officer of the Bank.

The auditors shall make a report to the proprietors and shareholders upon the annual balance-sheet and accounts; and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance sheet containing the particulars required by the bye-laws made under this Act, and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs, and in case they have called for any explanation or information from the directors, whether it has been given by the directors and whether it has been satisfactory.

Such report shall be read together with the report of the directors at the annual general meeting.

CHAPTER XI.—MEETINGS.

49. On the first Monday of the month of August in every year, or as soon after such day as is convenient, a general meeting shall be held, at which the directors shall submit to the proprietors and shareholders a statement of the affairs of the Bank made up to the preceding thirtieth day of June. Annual general meeting.

A notice convening such meeting, signed by the Secretary, shall be published in the local official Gazette, and in the case of the Bank of Bengal also in the *Gazette of India,* at least fifteen days before the meeting is held.

50. Any ten or more proprietors or shareholders holding stock or shares, or both, to the aggregate amount of fifty thousand rupees, or any three directors, may convene a special meeting upon giving fifteen days' previous notice of such meeting, and of the purpose for which the same is convened, as well to the directors as also by public advertisement in the local official Gazette, and in two of the English daily newspapers and one of the Vernacular newspapers: Special meetings.

Provided that three months' previous notice shall be thus given of any special meeting held for the purpose of increasing or reducing the capital of the Bank, and shall also be served on every proprietor and shareholder.

51. No business shall be transacted at any meeting, whether general or special, unless a quorum of twenty proprietors or shareholders, or both, in person or by proxy, is present at the commencement of such business. Quorum.

If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened by proprietors or shareholders not being directors, shall be dissolved: in any other case it shall stand adjourned to the same day in the following week at the same time and place, and if at such adjourned meeting a quorum is not present, it shall be adjourned *sine die.*

52. At meetings whether general or special, every election and other matter submitted to the meeting shall be decided by a majority of votes, except as in section thirteen and in section twenty-seven, clause 4, is specially provided, Decision by majority of votes.

and no person shall be allowed to vote at any such meeting in respect of any stock or share acquired by transfer, unless such transfer shall have been completed and registered at least three months before the time of such meeting. Persons not allowed to vote.

And no shareholder shall be entitled to vote at any meeting in respect of any shares held by him alone or jointly, whilst any call due from him alone or jointly remains unpaid. Shareholders in arrear as to calls.

Power to declare resolution carried by show of hands.

53. A declaration by the chairman of any meeting, except a special meeting held under section thirteen, that a resolution has been carried thereat upon a show of hands, shall be conclusive, and an entry to that effect in the book of proceedings of the Bank shall be sufficient evidence of that fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution, unless, immediately on such declaration, a poll be demanded in writing by five proprietors or shareholders present and entitled to vote at such meeting.

Poll to be taken, if demanded.

54. If a poll be demanded, it shall be taken at such time and place, and (except at the special meeting last aforesaid) either by open voting or by ballot, as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Proceedings and resolutions at meetings to be binding.

55. The proceedings at any meeting, and all resolutions and decisions of such meeting, shall be valid and binding on the Bank, so far as such proceedings, resolutions and decisions are consistent with the provisions of this or any other Act for the time being in force and regulating the Bank.

Scale of votes.

56. At all such meetings, the proprietors or shareholders shall vote according to the following scale:—

The proprietor of capital stock amounting to Rs. 2,000, or the holder of shares of which the total nominal amounts are equal to Rs. 2,000, shall be entitled to	1 vote.
The proprietor of capital stock amounting to Rs. 10,000, or the holder of shares of which the total nominal amounts are equal to Rs. 10,000, shall be entitled to	2 votes.
The proprietor of capital stock amounting to Rs. 20,000, or the holder of shares of which the total nominal amounts are equal to Rs. 20,000, shall be entitled to	3 "
The proprietor of capital stock amounting to Rs. 30,000, or the holder of shares of which the total nominal amounts are equal to Rs. 30,000, shall be entitled to	4 "
The proprietor of capital stock amounting to Rs. 40,000, or the holder of shares of which the total nominal amounts are equal to Rs. 40,000, shall be entitled to	5 "
The proprietor of capital stock amounting to Rs. 50,000, or the holder of shares of which the total nominal amounts are equal to Rs. 50,000, shall be entitled to	6 "
The proprietor of capital stock amounting to Rs. 75,000, or the holder of shares of which the total nominal amounts are equal to Rs. 75,000, shall be entitled to	7 "
The proprietor of capital stock amounting to Rs. 1,00,000, or the holder of shares of which the total nominal amounts are equal to Rs. 1,00,000, shall be entitled to	8 "
The proprietor of capital stock amounting to Rs. 1,25,000, or the holder of shares of which the total nominal amounts are equal to Rs. 1,25,000, shall be entitled to	9 "
The proprietor of capital stock amounting to Rs. 1,50,000, or the holder of shares of which the total nominal amounts are equal to Rs. 1,50,000, shall be entitled to	10 "

The proprietor of capital stock amounting to Rs. 1,75,000, or the holder of shares of which the total amounts are equal to Rs. 1,75,000, shall be entitled to ... ... 11 votes.

The proprietor of capital stock amounting to Rs. 2,00,000, or the holder of shares of which the total amounts are equal to Rs. 2,00,000, shall be entitled to ... ... 12 „

Where a person is both a proprietor of stock and a holder of shares, his shares shall, for the purpose of this section, be deemed to be stock.

No proprietor or shareholder shall be entitled to more than twelve votes at any such meeting.

Proxies of proprietors or shareholders.

57. Any proprietor or shareholder entitled to vote at any meeting under this Act may give a proxy in writing, either general or special, under his hand or the hand of his attorney duly authorized, to any other proprietor or shareholder.

Such proxy shall be produced at the time of voting, and shall entitle the person to whom it is given to vote on such matters as shall be authorized by the tenor of such proxy.

But no person shall be permitted to vote in virtue of such proxy unless it has been left for registration at the office of the Bank at least three clear days before the time for holding the meeting at which it is intended to be used :

Provided that a general proxy which has been registered at such office need not be again left for registration previous to any subsequent meeting.

Existing proxies.

Proxies existing and in force with reference to any of the present Banks, on the first day of May 1876, shall continue in force and be available at meetings under this Act, anything herein contained notwithstanding.

A general power-of-attorney shall be deemed a proxy within the meaning of this section.

Voting by lunatic and minor shareholders.

58. If any proprietor or shareholder is a lunatic or idiot, he may vote by his committee or other legal curator, and if any proprietor or shareholder is a minor, he may vote by his guardian, or any one of his guardians, if more than one.

CHAPTER XII.—Notices.

Service of notices by Bank.

59. Every notice or other document requiring to be served by the Bank upon any proprietor or shareholder may be served either personally, or by leaving it for, or sending it through the post by registered letter addressed to, him at his registered place of abode ;

and every notice sent through the post shall be deemed to have been served at the time at which, in the usual course of post, it would have been delivered.

Notices by shareholders.

60. Any proprietor or shareholder who changes his name or place of abode, or being a female marries, and the husband of any such female, respectively, shall not be entitled to recover any dividend or to vote until notice of the change of name or abode or marriage be given to the Bank, in order that the same may be registered.

Every notice to be given on the part of any proprietor or shareholder shall be left at the office of the Bank, or sent through the post by registered letter addressed to the Secretary of the Bank at its principal office.

Shareholder bound by notices to previous holders.

61. Every person who by operation of law, transfer or otherwise becomes entitled to any stock or shares, shall be bound by any and every notice or other document which, previously to his name and address being entered upon the register of the Bank in respect of such stock or shares, has been given to the person from whom he derives his title thereto.

Service of notices good notwithstanding shareholder's death.

62. When any notice or document is delivered or sent, in accordance with this Act, at or to the registered place of abode of a proprietor or shareholder, then, and notwithstanding he be then deceased, and whether or not the Bank have notice of his decease, such service of the notice or other document shall, for all purposes of this Act, be deemed service thereof on him, or, if dead, on his heirs, executors, administrators, and every of them.

CHAPTER XIII.—Bye-laws.

Power of directors to make bye-laws.

63. The directors shall as soon as may be make, and may from time to time alter, bye-laws regulating the following matters or any of them :—

(*a*) the maximum amount which may be advanced or lent by discount of bills, or otherwise, to any individual or partnership, without the security mentioned in section thirty-six, paragraph (*a*), Nos. (1) to (5) inclusive,

(*b*) the circumstances under which alone advances may be made to directors or officers of the Bank, or the relatives of such directors or officers, or to companies, firms or individuals with which or with whom such directors, officers, or relatives are connected as partners, directors, managers, servants, shareholders, or otherwise,

(*c*) the particulars to be contained in the half-yearly balance-sheet.

The directors may from time to time make bye-laws regulating the following matters or any of them :—

(*d*) the distribution of business amongst the directors,

(*e*) their remuneration,

(*f*) the delegation of any powers of the directors to committees consisting of members of their body,

(*g*) the procedure at the meetings of the board or of any committee of the directors,

(*h*) the books and accounts to be kept at the head and other offices respectively,

(*i*) the reports and statements to be prepared and made by the Chief Accountant, the heads of departments, and the other officers of the Bank,

(*j*) the management of the branches and agencies,

(*k*) the fees payable for certificates of shares or receipts for stock, or for registration of transfers of shares or stock,

(*l*) the renewal of certificates of shares and receipts for stock, which have been worn-out or lost,

(*m*) and generally, for the conduct of the business of the Bank:

Provided that no bye-law, or alteration or rescission of any bye-law, shall be of any validity, except in so far as the same is consistent with the provisions of this Act, and has been previously approved by the Governor-General in Council, and such approval has been signified in writing under the hand of a Secretary to the Government of India. Proviso.

CHAPTER XIV.—MISCELLANEOUS.

64. The directors may institute, conduct, defend, compromise, refer to arbitration and abandon legal and other proceedings and claims by or against the Bank or the directors or officers of the Bank, and otherwise concerning its affairs. Power to institute and compromise suits.

65. In any suit brought against any shareholder to recover any debt due for any call or other monies due from him in his character of shareholder, it shall be sufficient to allege that the defendant is a shareholder of the Bank, and is indebted to the Bank in respect of a call made or other monies due, whereby a right to sue has accrued to the Bank; Evidence in legal proceedings against shareholders.

and, on the hearing of any suit brought by the Bank against any shareholder to recover any debt due for any call, it shall be sufficient to prove that the name of the defendant is on the register of shareholders of the Bank as the holder of the shares in respect of which such debt accrued, and that the call was made, and that notice of such call was duly given to the defendant in pursuance of this or any other Act for the time being in force regulating the Bank;

and it shall not be necessary to prove the appointment of the directors who made such call, nor that a quorum of directors was present at the Board

at which such call was made, nor that the meeting at which it was made was duly convened or constituted.

Modification of 33 Geo. III, sess. 2, cap. 52.

66. Nothing in the Thirty-third of George the Third, session two, chapter fifty-two, shall be deemed to render it unlawful for any servant of Government, or for any Judge of a High Court, to become a member of any corporation established under this Act.

Power to wind up Bank under Indian Companies Act.

67. Notwithstanding anything contained in this Act or in section 231 of Act No. X of 1866, whenever the proprietors and shareholders have passed a special resolution that the Bank shall be wound up voluntarily under the Indian Companies Act, 1866, the Bank shall be wound up accordingly, as if it were a Company under that Act:

Provided that no such special resolution shall be deemed to have been passed unless at least one-third of the proprietors and shareholders holding at least one-half of the paid-up capital of the Bank for the time being, be present in person or by proxy, and a majority poll by open voting in favour of the said resolution, and such resolution has been confirmed by a majority of such proprietors and shareholders at a subsequent special meeting held at an interval of not less than one month, nor more than two months, from the date of the meeting at which such resolution was first passed.

Sale to Banks of Bengal and Madras of Government shares therein.

68. And whereas the Government of India has agreed to sell, and the directors of the present Bank of Bengal have agreed to purchase, at a premium of twenty-two and a half per centum, the said two thousand two hundred shares of one thousand rupees each held by the Government of India in the same Bank; and it is intended that the directors of the Bank of Bengal as constituted by this Act shall cancel two thousand of such shares, and sell for the benefit of the Bank four hundred shares in the same Bank corresponding with the remaining two hundred shares so agreed to be sold and purchased;

And whereas the Government of India has agreed to sell, and the directors of the present Bank of Madras have agreed to purchase, at a premium of ten per centum, the said five hundred and sixty-two and a half shares held by the Government of India in the same Bank: and it is intended that the directors of the Bank of Madras as constituted by this Act shall cancel the same shares;

Purchase and cancellation by directors of 62½ shares in present Bank of Madras.

And whereas the directors of the present Bank of Madras have purchased and cancelled other sixty-two and a half shares in such Bank;

And whereas the said respective directors of the present Bank of Bengal and Bank of Madras had no power to enter into the said agreements with the Government of India, and the directors of the Bank of Bengal as constituted

by this Act have no power to sell the four hundred shares referred to in this section, and the said directors of the present Bank of Madras had no power to purchase and cancel the said other sixty-two and a half shares ;

And whereas the directors of the Bank of Bengal as constituted by this Act have no power to cancel the said two thousand shares, and the said directors of the Bank of Madras as constituted by this Act have no power to cancel the said five hundred and sixty-two an a half shares ;

And whereas it is expedient to confirm the said agreements with the Government of India, and to indemnify the said respective directors of the present Bank of Bengal and Bank of Madras for entering into the same, and to confirm the said purchase of the said other sixty-two and a half shares by the directors of the present Bank of Madras, and to indemnify the same directors for making the same, and for cancelling the same shares, and to empower the directors of the Bank of Bengal as constituted by this Act to sell the said four hundred shares, and to empower the respective directors of the Bank of Bengal and Bank of Madras as constituted by this Act to cancel the said shares so intended to be cancelled ; It is hereby further enacted as follows :—

Confirmation of agreements with Government.

(*a*).—The said agreements with the Government of India are hereby confirmed, and the said respective directors of the present Bank of Bengal and Bank of Madras are hereby indemnified for entering into the same ; and no suit or other proceeding shall be maintained against any such director in respect of anything *bonâ fide* done in pursuance of either of such agreements.

Confirmation of purchase of the 62½ shares.

(*b*).—The said purchase of the said other sixty-two and a half shares is hereby confirmed, and the said directors of the present Bank of Madras are hereby indemnified for making the same and for cancelling the same shares ; and no suit or other proceeding shall be maintained against any such director in respect of anything *bonâ fide* done in effecting such purchase and cancellation.

Sale by directors of 400 shares in Bank of Bengal.

(*c*).—The directors of the Bank of Bengal as constituted by this Act shall have power to sell, and shall, as soon as conveniently may be, sell, the said four hundred shares, either together or in parcels, and either by public auction or private contract, and shall apply the proceeds in or towards paying the price of the shares of the Government of India so agreed to be purchased by the directors of the present Bank as aforesaid, or otherwise for the benefit of the Bank of Bengal as constituted by this Act.

Cancellation of certain shares

(*d*).—The directors of the Bank of Bengal as constituted by this Act shall have power to cancel, and shall, as soon as conveniently may be, cancel, the said two thousand shares, and the directors of the Bank of Madras as constituted by this Act shall have power to cancel, and shall, as soon as conveniently may be, cancel, the said five hundred and sixty-two and a half shares.

SCHEDULE.

(SEE SECTION 2.)

Part I.—Statute.

Number and year.	Abbreviated Title.	Extent of repeal.
47 George III, sess. 2, cap. 68.	An Act for the better government of the Settlements of Fort St. George and Bombay, &c.	Sections eight, nine and ten.

Part II.—Acts of the Governor General in Council.

Number and year.	Title.
IV of 1862	An Act for regulating the Bank of Bengal.
V of 1862	An Act to provide for the payment at the Banks of Bengal, Madras and Bombay, of monies payable at the General Treasuries of Calcutta, Madras and Bombay.
VI of 1862	An Act to annex a schedule to Act IV of 1862.
XXIX of 1863	An Act to declare the receipts of the Banks of Bengal, Madras and Bombay to be sufficient in lieu of the receipts of the Sub-Treasurers of Fort William, Fort St. George and Bombay, respectively.
XIX of 1870	An Act to enable the Directors of the Bank of Bengal to act by a quorum.

Part III.—Acts of the Governor of Fort St. George in Council.

Number and year.	Title.
VI of 1866	An Act for repealing Madras Act V of 1862, and for regulating the Bank of Madras.
I of 1871	An Act to amend Madras Act VI of 1866, to give validity to certain acts done by the Directors of the Bank of Madras, and to enable outgoing Directors to be re-elected.

Part IV.—Acts of the Governor of Bombay in Council.

Number and year.	Title.
X of 1863	An Act for the Re-incorporation and Re-constitution of the Bank of Bombay.
XV of 1866	An Act to amend Act No. X of 1863 (Bombay).
I of 1867	An Act to reduce the amount of the capital of the Bank of Bombay and of the shares therein, and to amend Act X of 1863 and Act XV of 1863 (Bombay).

ACT No. XIII OF 1876.

Received the Governor General's assent on the 29th June 1876.

An Act to amend the law relating to Merchant Seamen.

WHEREAS it is expedient to amend the law relating to Merchant Seamen in manner hereinafter appearing; It is hereby enacted as follows:— Preamble.

Preliminary.

1. This Act may be called "The Indian Merchant Seamen's Act, 1876:" Short title.

It extends to the whole of British India; Local extent.

And it shall come into force at once. Commencement.

2. In this Act—"seaman" includes every person (except Masters, pilots, and apprentices duly indentured and registered) employed or engaged in any capacity to serve at sea for the purposes of any ship. Interpretation-clause.

Distressed Seamen.

3. A certificate signed by a Secretary to the Local Government, or by such other officer as it appoints in this behalf, to the effect that any seaman named therein is distressed, shall, in all proceedings under sections 211, 212 and 213 of the Merchant Shipping Act, 1854, be conclusive evidence that such seaman is distressed within the meaning of the same sections; and any Master of a British ship refusing to accept such seaman as a distressed seaman under the provisions of the said sections shall, for each seaman with respect to whom he so refuses, be liable to a fine which may extend to one thousand rupees. Evidence of distress of seamen. Penalty for refusing to accept distressed seamen.

Discharge of Seamen.

4. No seaman or apprentice not shipped in British India shall be discharged without the previous sanction in writing of such officer as the Local Government appoints in this behalf: and such sanction shall be given or withheld at the discretion of the officer so appointed; but whenever it is withheld, the reasons for so withholding it shall be recorded by him in writing. Discharge of seamen.

Any person discharging a seaman or apprentice in wilful disobedience to the prohibition contained in this section, shall be liable to imprisonment for a term which may extend to three months, or to fine not exceeding one thousand rupees, or to both.

Engagement of Seamen.

Engagement of Native seamen.

5. The Local Government, or such officer as it appoints in this behalf, may, by order in writing signed by its Secretary or by such officer, prohibit any person from engaging in the territories subject to the said Government, or in any specified portion of such territories, any Native of India to serve as a seaman on board any ship specified in such order; but in all such cases the reasons for the prohibition shall be stated in writing.

Whoever wilfully disobeys the prohibition contained in this section shall be liable to imprisonment for a term which may extend to three months, or to fine not exceeding one thousand rupees, or to both.

Deserters.

Deserters.

6. Whenever any seaman or apprentice not shipped in British India deserts or otherwise absents himself without leave from any ship in which he is engaged to serve, the Master of the ship shall, within forty-eight hours of discovering such desertion or absence, report the same to such officer as the Local Government appoints in this behalf, unless in the meantime the deserter or absentee returns.

Any Master wilfully neglecting to comply with the provisions of this section, may be punished with fine not exceeding one hundred rupees, or imprisonment for a term which may extend to one month, or with both.

Imprisoned Seamen.

Power to deal with imprisoned seamen in accordance with section 88, Act I of 1859.

7. If any seaman or apprentice not shipped in British India is imprisoned for any offence for which he has been sentenced to imprisonment for a term not exceeding one month, any Magistrate may deal with him in the same way as he may deal with a seaman or apprentice imprisoned on any of the grounds mentioned in section 88 of Act No. I of 1859 (*for the amendment of the law relating to Merchant Seamen*).

Rules as to imprisoned seamen.

8. If any seaman or apprentice not shipped in British India is imprisoned on a complaint made by or on behalf of the Master or owner of the ship in which he is engaged to serve, on any of the grounds mentioned in the said Act No. I of 1859, section 88, or for any offence for which he has been sentenced to imprisonment for a term not exceeding one month, the following rules shall be observed:—

(*a*) No person shall, while such imprisonment lasts, without the previous sanction in writing of the Local Government or of such officer as it appoints in this behalf, engage any Native of India to serve as a seaman on board such ship;

(*b*) the Local Government, or such officer as it appoints in this behalf, may tender such seaman or apprentice to the Master or owner of the ship in which he is engaged to serve, and if such Master or owner, without assigning reasons satisfactory to the Local Government or to such officer as aforesaid, refuse to receive him on board, may require such Master or owner to deposit in the local Shipping Office (1) the wages due to such seaman or apprentice, and his money, clothes and other effects, and (2) such sum as may in the opinion of the Local Government or of such officer as aforesaid be sufficient to defray the cost of the passage of the said seaman or apprentice to the port at which he was shipped, according to the scale of cost usual in the case of distressed seamen.

Whoever wilfully disobeys the prohibition contained in clause (*a*) of this section shall be liable to imprisonment for a term which may extend to three months, or to fine not exceeding one thousand rupees, or to both.

Any Master or owner refusing or neglecting to deposit such wages, money, clothes and other effects, or such sum as aforesaid, may be punished with fine not exceeding five hundred rupees, and in default of payment of such fine, to imprisonment for a term which may extend to three months.

Accommodation of Seamen.

Amendment of Act I of 1859, section 70.

9. And whereas it is expedient to increase the space required by the said Act No. I of 1859, section 70, to be allowed for European seamen and apprentices and for lascars or Native seamen; It is hereby further enacted as follows:—

Such section shall be read as if for the expressions "nine superficial feet," "fifty-four cubic feet," and "four superficial feet," the expressions "ten superficial feet," "sixty cubic feet," and "six superficial feet" were respectively substituted, and as if, in the third paragraph of the same section, after the word "superficial," the words "and thirty-six cubic" were inserted.

Meaning of 'established par value.'

Meaning of expression 'established par value' in Act I of 1859, section 54.

10. And whereas doubts have been raised as to the meaning of the expression "established par value" in the said Act No. I of 1859, section 54, for the purpose of removing such doubts, it is hereby enacted as follows:—

For section 54 of Act No. I of 1859, the following shall be substituted (that is to say):

"54. When any monies are payable in India to any seaman or apprentice for wages or otherwise under any agreement wherein such monies are expressed

to be payable in British currency, the seaman or apprentice shall be entitled to demand and recover in the current coin of India the amount due to him estimated according to the rate of exchange for the time being fixed by the Secretary of State for India in Council, with the concurrence of the Lords Commissioners of Her Majesty's Treasury, for the adjustment of financial transactions between the Imperial and the Indian Governments."

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